



Elizabeth Espinosa Krupa, *Chair*
William Leone, *Vice-Chair*
Selina Baschiera, *Commissioner*
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 20-02 (Acceptance of Employment Award)

Summary: It would not be a violation of Article XXIX for select county employees to accept one-time monetary performance awards in recognition of work done in excess of typical work assignments.

I. Background

The Arapahoe County Clerk and Recorder (the “Requester”) submitted a request to the Commission asking about the ethical implications of providing several Arapahoe County employees (the “award recipients” or “recipients”) with a one-time cash award for their work contributions—what the private sector might call a “bonus”. The awards are contemplated in connection with Arapahoe County’s “COVID-19 Project”, described below.

In March 2020, Arapahoe County began the COVID-19 Project, which involved a concentrated work effort to respond to the COVID-19 emergency. Among other things, the project included changing employee work schedules and locations, upgrading technology, addressing facility safety, creating and implementing new protocols, making changes to operations, and addressing financial and community impacts.

The Arapahoe County Board of County Commissioners (the “BOCC”) approved a COVID-19 Project One-Time Award to be paid to employees who contributed significantly to the management, administration, and/or operation of the Project that is beyond their day to day roles. The award constitutes additional compensation for work done above and beyond an employee’s normally assigned duties. The BOCC stipulated that any award must come from the individual department budgets, which had previously been appropriated by the BOCC at the beginning of the fiscal year.

II. Jurisdiction

“Local government official” means an elected or appointed official of a local government but does not include an employee of a local government. Colo. Const. art. XXIX, sec. 2(3).
“Government employee” means any employee, including independent contractors, of the state executive branch, the state legislative branch, a state agency, a public institution of higher

education, or any local government, except a member of the general assembly or a public officer. Colo. Const. art. XXIX, sec. 2(1). “Local government” means county or municipality. Colo. Const. art. XXIX, sec. 2(2).

Requester is the Arapahoe County Clerk and Recorder, a local government official. The award recipients, employees of Arapahoe County, are government employees. The Commission has jurisdiction over both Requester and the award recipients.

III. Applicable Law

Subsection 3(1) of Article XXIX of the Colorado Constitution provides:

No...government employee shall accept or receive any money, forbearance, or forgiveness of indebtedness from any person, without such person receiving lawful consideration of equal or greater value in return from the public officer, member of the general assembly, local government official, or government employee who accepted or received the money, forbearance or forgiveness of indebtedness.

Subsection 3(3) of Article XXIX of the Colorado Constitution provides:

The prohibitions in subsections (1) and (2) of this section do not apply if the gift or thing of value is:

* * *

(h) A component of the compensation paid or other incentive given to the recipient in the normal course of employment.

IV. Discussion

The Arapahoe County HR Guidelines, approved by the BOCC, provide that “[r]egular employees are eligible to receive one-time awards based upon individual job accomplishments and accomplishments achieved as members of a project team or assignment that contributes significantly to the Department, Office or County.” The COVID-19 Project One-Time Award was a particular implementation of those guidelines in the context of employee contributions to the COVID-19 Project that were above and beyond the employees’ ordinary job duties.

Under those guidelines, every elected official who requests to issue a one-time award to an employee must document the justification for the award by describing the employee’s contributions to the project. Funds for the awards come from each office’s annual budget, as previously approved and appropriated by the BOCC. Elected officials have discretion regarding how many employees will receive the award. The payment amount for the awards is determined by the HR Department based on a market analysis for similar types of bonuses and calculated as a percentage of the salary average for the county employees who spent most or all their time over the past four months on the project. For each recipient, the award may be made at either the \$2,250 or \$3,500 level.

The Clerk and Recorder’s Office consists of a Motor Vehicle Division, Recording Division, and

Elections Division, and employs over 130 employees. The Requester desires to issue the COVID-19 Project One-Time Award to the five deputy directors in the Clerk's Office: Chief Deputy Clerk, Deputy Director of Administration, Deputy Director of Motor Vehicle, Deputy Director of Records, and the Deputy Director of Elections. According to Requester, those five employees have "implemented essentially a complete overhaul of the Clerk and Recorder office operations, while at the same time completing their normal duties and responsibilities."

The facts of this request fall squarely within the language of the gift ban in Article XXIX and its exceptions.¹ The prohibition against government employees receiving money from any person does not apply when the payor—in this case, Arapahoe County—receives lawful consideration of equal or greater value in return. The Requester posits that "lawful consideration was provided by each deputy director employee to justify the monetary award" in the form of significant time and effort in implementing the COVID-19 Project, in addition to their regular duties. In this case, however, the Commission need not conduct an in-depth inquiry about the sufficiency of the consideration provided by each recipient. Rather, a specific exception applies to the gift ban that applies to the instant request.

Subsection 3(3)(h) of Article XXIX provides that the gift ban in subsection 3(1) does not apply if the gift is "[a] component of the compensation paid or other incentive given to the recipient in the normal course of employment."² In this case, Arapahoe County has created a specific award program for its employees, with rules governing the process and propriety of granting the cash bonus. The incentive award program carries with it the requirements that the award in each case be substantively justified and come from the department's budget. Additionally, the Requester has confirmed that the recipients did not participate in the decision-making process to confer the awards. As such, no conflict of interest or appearance of impropriety exists. For the foregoing reasons, the Commission finds that the awards at issue in this request constitute a component of the compensation paid to the recipients, are akin to bonuses awarded for exemplary performance in the private sector, and fall under the 3(3)(h) exception to the gift ban.

V. Conclusion

It would not be a violation of Article XXIX for select Arapahoe County government employees to accept the County's COVID-19 Project monetary award under the facts of this request.

¹ The Commission has previously considered other advisory opinion requests in which a government employee has received a monetary prize or award. *See, e.g.*, Advisory Opinions 09-07, 10-01, and 14-22. None of these opinions are on point, however. In each of those opinions, the prize or award was given by a third-party entity other than the government employer.

² The Commission has examined several other requests in which the 3(3)(h) exception is analyzed. Again, none of those opinions are on point. In Advisory Opinion 14-01, the 3(3)(h) exception was found inapplicable because the gift was given by an entity other than the government employer. In Advisory Opinions 09-02, 10-04, and 14-03, the Commission addressed bar association memberships, donations to financially distressed employees, and donations to benevolent police trust funds, respectively. None of the above-mentioned opinions involved a monetary bonus such as the one contemplated in the instant 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*

Debra Johnson, *Commissioner*

Yeulin Willett, *Commissioner*

Dated: July 21, 2020

Commissioner Selina Baschiera, recused