

# State of Colorado



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**Dino Ioannides**, *Executive Director*

## **Advisory Opinion 20-03** (Government Acceptance of a Cash Gift)

**Summary:** It would not be a violation of Article XXIX for Grand County Emergency Medical Service to accept a cash gift to be used for the purchase of protective gear for employees.

### **I. Background**

Grand County Emergency Medical Service (GCEMS) is a government department of Grand County, Colorado. GCEMS's annual budget is set by the Grand County Board of County Commissioners (BOCC). GCEMS's operations are not funded from the county general fund, but from a separate EMS fund with revenue generally derived from patient fees and a local mill levy.

On behalf of GCEMS, the Grand County Attorney ("Requester") has requested an advisory opinion regarding the propriety of GCEMS's acceptance of a cash donation.

### **II. Jurisdiction**

The employees and independent contractors of GCEMS are "government employee[s]" subject to the Commission's jurisdiction. Colo. Const. Art. XXIX, § 2(1).

The Independent Ethics Commission has authority to issue advisory opinions on ethics issues arising under Article XXIX or any other standards of conduct or reporting requirements as provided by law. See Colo. Const. art. XXIX, § 5(5).

### **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 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 ... government employee who solicited, accepted or received the gift or other thing of value.

#### **IV. Discussion**

The cash gift to GCEMS is being offered by a family that has used GCEMS on multiple occasions for the care of a family member, including at the time of the family member's death. The amount of the gift is "around \$5,000.00". The family's intent is that GCEMS should use the gift to purchase protective winter gear for GCEMS first responders to use when responding to EMS calls.

Requester states that GCEMS employees are required to return all uniforms and equipment when leaving the employ of GCEMS. Although the protective gear will be used by the employees of GCEMS, both the cash gift and any protective gear purchased with the cash gift will remain the property of GCEMS.

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.

The Commission employs a five-factor test in determining whether a gift is to a covered individual or to the government. The Commission considers: (1) whether the offer is to a specific individual or to a designee of the state or local agency; (2) whether the offer is *ex officio*; (3) whether the gift 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 gift is educational or business-related. *See* Position Statement 12-01. Although the five-factor test is typically used in the context of travel, it has also been used in analyzing the acceptance of other gifts. *See, e.g.*, Letter Ruling 16-02 (the five-factor test was used to analyze the propriety of waived conference registration fees).

Under the first factor, the Commission finds that the gift is being offered to GCEMS, not to a specific covered individual.

Under the second and third factors, the Commission finds that the gift is being offered by virtue of and in connection with the official duties of GCEMS employees. Indeed, the protective gear has no other use than its use in connection with official emergency services provided by the employees of GCEMS.

Under the fourth factor, the Commission finds that there is no existing or potential conflict of interest or appearance of impropriety. The protective gear will not be kept for personal use by GCEMS employees; rather the protective gear must be returned to GCEMS upon an employee's departure from the employ of GCEMS. Requester assures that any financial savings realized by Grand County—savings that would be realized by using the cash gift rather than budgeted funds to purchase protective gear—would not be used for individual employee bonuses or private benefits. Moreover, due to the very nature of provisioning emergency services (namely, the fact

that emergency services are provided indiscriminately to any person making a request for those services), the gift in this case provides no opportunity to curry favor with any government employee or public official.

Under the fifth factor, the gift is clearly related to the business activities of GCEMS; it has no other purpose.

## **V. Conclusion**

It would not be a violation of Article XXIX for GCEMS to accept the gift described above.

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* (not participating)

Yeulin Willett, *Commissioner*

Dated: October 20, 2020