

State of Colorado



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Dino Ioannides, *Executive Director*

Advisory Opinion 23-01 (Acceptance of Gifts)

Summary: Under the facts and circumstances of this request, it would not be a violation of Article XXIX for Requestor’s employees to accept gifts in the form of lunch valued at less than \$75.00.

I. Jurisdiction

Requestor is the Interim Director of the Division of Motor Vehicles (“Division” or “Requestor”) in the Department of Revenue, and submits this request on behalf of the employees of the Division. The Division’s employees are subject to the jurisdiction of the Independent Ethics Commission (“IEC” or “Commission”) and the provisions of Article XXIX of the Colorado Constitution pursuant to Section 2(1) of that article. Requestor is also submitting her request on behalf of the employees of county Driver’s License Offices, and those employees are also subject to the IEC’s jurisdiction and the provisions of Article XXIX pursuant to Section 2(1).

Any person who is subject to the IEC’s jurisdiction may submit an advisory opinion request concerning whether any conduct by that person would constitute a violation of Article XXIX, or any other standards of conduct or reporting requirements as provided by law. Colo. Const. art. XXIX, § 5(5). The Commission considers such requests pursuant to the provisions set forth in IEC Rule 3.

II. Background

The Division has several Driver’s License Offices throughout the state of Colorado, each of which is statutorily responsible for requesting, of all driver’s license applicants, whether the applicant elects to become an organ and tissue donor and/or donate \$1 to the organ and tissue donor awareness fund. §§ 42-2-107(4)(b)(V), 42-2-118(1)(a)(II)(A), C.R.S. The same requirements apply to employees of county-run Driver’s License Offices. *Id.* Donor Alliance, Inc., is a 501(c)(3) nonprofit organization organized to run the state’s tissue bank and promote awareness of human organ and tissue donation. Both Division and Donor Alliance employees are also statutorily required to “act as a conduit to make money available for promoting organ and tissue donation and ... this role constitutes a public purpose.” § 42-2-107(4)(b)(I)(B), C.R.S.

For National Donate Life Month, which occurs in April, the Division’s various offices and the

county Driver's License Offices will compete in an organ and tissue donation awareness contest by decorating office locations. Photos of the decorations will be uploaded to social media sites, and the office with the most votes for best decorations will receive a lunch provided by Donor Alliance. Requestor estimates the value of the lunch at between \$5 and \$15 per person. Requestor submits this opinion asking whether the lunch would be a permissible gift to the employees of the winning Driver's License Office.

III. Applicable Law

Section 3(2) of Article XXIX of the Colorado Constitution provides in relevant part:

No ... government employee... shall solicit, accept or receive any gift or other thing of value having ... a fair market value... greater than [\$75.00]¹ in any calendar year..."

Section 3(3) provides that the prohibition on gifts in Section 3(2) categorically 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."

Section 24-18-104 of the Colorado Revised Statutes has a similar prohibition on gifts of "substantial value" that "would tend improperly to influence a reasonable person in his [or her] position to depart from the faithful and impartial discharge of his [or her] public duties." The statutory gift ban tracks the amount of the gift limit in Article XXIX, as periodically adjusted for inflation. § 24-18-104(5), C.R.S.

IV. Discussion

The lunch offered by Donor Alliance does not violate either the constitutional or the statutory gift ban. The value of the lunch per employee is less than the gift ban limit of \$75.00, and there is no concern that the lunch would tend to improperly influence the employees of the winning Driver's License Office to depart from their public duties.

In Advisory Opinion 14-01, the IEC considered whether the Arapahoe County Clerk and Recorder's Office could accept a holiday gift box from the Denver Broncos containing multiple items, some of which were valued over the gift ban limit (\$53.00 at that time), and disperse the items to employees via office lottery. The IEC determined that the gift box would violate the gift ban, even if disbursed among employees. A deciding factor in that case was the Clerk and Recorder's Office had a "back door" policy for Broncos players, allowing them to renew vehicle registrations and driver's licenses in a private area of the office. The IEC viewed the gift as a reward for official action taken in violation of § 24-18-104, C.R.S.—*i.e.*, special treatment of Broncos players who had business with the Clerk and Recorder's Office.

The same concerns are not present here. The lunch sought to be gifted falls below both the constitutional and the statutory gift ban limits, and there is no *quid pro quo* arrangement. In fact, the Driver's License Office employees are statutorily mandated to promote organ and tissue

¹ The gift ban limit is periodically adjusted for inflation and is currently set at \$75.00. See Position Statement 23-01.

donation. The statutory scheme declares that “state government should play a role in increasing the availability of human organs and tissue to procurement organizations,” and specifically directs the Division to provide “informational booklets or other informational sources on the importance of organ and tissue donations to applicants.” § 42-2-107(4)(b)(I)(B), (V). For these reasons, promoting organ and tissue donation appears to be not only consistent with Driver’s License Office employees’ job duties, but may in fact be part of their job duties such that the lunch incentive would be an exception to the constitutional gift ban as “another incentive given to the recipient in the normal course of employment.” *See* Colo. Const. art. XXIX, § 3(3)(h). We need not reach the employment incentive exception, given that the value of the gift follows below the \$75.00 limit, but we note the exception as an alternative basis for approval of the request.

We agree with Requestor that this request is distinguishable from the circumstances in Advisory Opinion 14-08, where Driver’s License Office employees were offered gifts by Donor Alliance in exchange for procuring monetary donations or persuading driver’s license applicants to check “Y” under the organ and tissue donation box. There, the per-employee incentive was anticipated to exceed the \$75.00 limit, and the IEC was concerned that the *quid pro quo* arrangement could tend to influence employees to depart from their public duties. *See* Advisory Opinion 14-08 at 4-5.

Finally, we note that in Advisory Opinion 22-01, the IEC expressly overruled the portion of Advisory Opinion 14-01 that considers the value of a gift to be the sum total of gifts to a specific agency’s employees. The IEC explained that such an approach would disadvantage employees of large agencies or departments. The IEC believes that valuing the gift on a per-employee basis is more consistent with the language of Article XXIX, which is focused on the value of the gift received by a covered individual, not by an agency. *See* Colo. Const. art. XXIX § 3(2).

V. Conclusion

Under the facts and circumstances of this request, it would not be a violation of Article XXIX or the statutory standards of conduct for Driver’s License Office employees to accept a lunch incentive for promoting National Donate Life Month.

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

Cole Wist, *Chair* (not participating)
Sarah Mercer, *Vice-Chair*
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Dated: December 11, 2023