

State of Colorado



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Dino Ioannides, *Executive Director*

Advisory Opinion 24-01 (Travel Expenses)

Summary: Under the facts and circumstances of this request, it would not be a violation of Article XXIX for Requestor to accept payment of travel expenses by the federal government for her attendance at the Forest Research Advisory Council (“Council”) meeting as part of her assigned job duties as an appointee to that Council.

I. Jurisdiction

Requestor is an employee of the Colorado Office of Economic Development and International Trade (“OEDIT”), a division of the Governor’s Office. State employees are subject to the IEC’s jurisdiction and the provisions of Article XXIX of the Colorado Constitution pursuant to Section 2(1) of that article.

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. Factual Background

The Council is an advisory entity created by the Agriculture and Food Act of 1981 to make recommendations to the Secretary of Agriculture regarding the Forest Service research program. That program covers regional and national forestry research planning and coordination within federal and state agencies, forest industries, forestry schools, and non-governmental organizations. Requestor was appointed to the Council by the Secretary of Agriculture based on her state government role, and is the “State and Local Government” appointee to the Council. OEDIT is engaged in a statewide coalition created to explore the feasibility of scaling up mass timber products using wildfire mitigation harvest.

Requestor’s involvement in the Council includes contributing to recommendations to the Secretary regarding forest research funding, and brings knowledge regarding forest health research back to the state of Colorado. The Secretary uses the Council’s recommendations to

encourage and assist states in forestry research.

The Council convenes annually in Washington, D.C., to formulate recommendations for forestry research. The agenda for the November 2024 meeting is focused on that goal. The USDA pays travel for all Council members, which includes travel to and from the meetings, lodging within federal government rate limits, and a per diem allowance of \$90/day. USDA staff is responsible for booking the travel and reimbursing lodging expenses.

Requestor seeks an advisory opinion to determine whether the USDA's reimbursement for her travel expenses related to the Council is permissible under Colorado law. Requestor notes that she can obtain reimbursement either directly or through her employer, the State of Colorado.

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)(f) provides an exception for reasonable expenses "paid 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 in a panel, or represent the state or local government..."

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.

In assessing whether the gift ban applies in the first place, the IEC distinguishes between gifts given to individuals and gifts given that are a benefit to the state. If gifts inure to the benefit of the state, then the prohibition in Section 3(2) does not apply.

IV. Discussion

Given the explicit language of Section 3(3)(f), that exception does not apply to travel expenses paid for by the federal government. However, Section 3(2) applies only to gifts to covered individuals. Because the USDA's payment and/or reimbursement of travel expenses related to Requestor's service on the Council inures to the benefit of the state, such reimbursement does not fall within the parameters of Article XXIX.

The IEC has developed a multi-factor test to determine whether a gift inures to the benefit of an

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

individual or to the state. The IEC considers: (1) whether the offer is to a specific individual or to a designee of the state agency; (2) whether the offer of reimbursement is *ex officio*; (3) whether the event 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 travel is educational or business-related, or primarily for entertainment. *See* Position Statement 12-01.

Under the first factor, the reimbursement of travel is to Requestor specifically, but in her role as the State and Local Government appointee. She was appointed based on her role at OEDIT, and based on her work for the state. Under the second factor, the offer of reimbursement is in Requestor's official capacity, made by virtue of her role on the Council and as the State and Local Government appointee. Under the third factor, the event is related to Requestor's official duties on the Council, but not necessarily her duties as an employee of OEDIT. However, the expertise she provides on the Council is based on her role at OEDIT, and the state of Colorado benefits from the knowledge Requestor gains regarding forest health research. The fact that the travel can also be reimbursed directly to the state demonstrates that the travel aligns with Requestor's official duties.

Under the fourth factor, Requestor stated that there is no potential for a conflict of interest or appearance of impropriety arising from the USDA reimbursing Council travel expenses. The state's interests are not adverse to that of the Council or the USDA, and OEDIT is not regulated by the USDA. *See* Advisory Opinion 19-07. To the extent there is the potential for the Council to recommend funding for Forest Service research projects within Colorado, Requestor can assess participation in those recommendations and any potential conflicts on a case-by-case basis.

Under the fifth factor, the primary purpose of the travel is educational. The agenda for the November 2024 meeting is focused on furthering the statutory purposes of the Council, and no extraneous entertainment is included.

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 Requestor to accept payment and/or reimbursement for travel expenses to the Council meeting in Washington, D.C. from the USDA.

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: October 16, 2024