

State of Colorado



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Letter Ruling No. 09-01 (Lunch with a Lobbyist)

SUMMARY: It would be a violation of Colorado Constitution Article XXIX for a “professional lobbyist” to have lunch with a public official or public employee at a venue where the public official or employee is not allowed to pay for his or her own meal.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for letter ruling, asking whether a professional lobbyist may have lunch with members of the General Assembly or other state public officials at the University Club. The professional lobbyist is a member of the University Club, described in the request as “a convenient, comfortable place close to the Capitol.” According to the facts set forth in the request, the University Club allows only members to pay for meals. Guests may enjoy meals in the dining room only as a guest of a member; they are not permitted to pay.

The requestor of this Letter Ruling is registered as a lobbyist with the Secretary of State’s Office.

II. JURISDICTION

“Professional lobbyists,” as defined by CO Const. Art. XXIX, are subject to Art. XXIX Sec. 3(4) and thus, under the jurisdiction of the Commission.

III. APPLICABLE LAW AND PRECEDENT

Section 2 of Article XXIX (Definitions) reads in relevant part:

(5) “Professional lobbyist” means any individual who engages himself or herself or is engaged by any other person for pay or for any consideration for lobbying. “Professional lobbyist” does not include any volunteer lobbyist, any state official or employee acting in his or her official capacity, except those designated as lobbyists as provided by law, any elected public official acting in his or her official capacity, or any individual who appears as counsel or advisor in an adjudicatory proceeding.

Section 3 of Article XXIX (Gift ban) reads in relevant part:

(4) Notwithstanding any provisions of this section to the contrary, and excepting campaign contributions as defined by law, no professional lobbyist, personally or on behalf of any other person or entity, shall knowingly offer, give, or arrange to give, to any public officer, member of the general assembly, local government official, or government employee, or to a member of such person’s immediate family, any gift or thing of value, of any kind or nature, nor knowingly pay for any meal, beverage, or other item to be consumed by such public officer, member of the general assembly, local government official, or government employee, whether or not such gift or meal, beverage or other item to be consumed is offered, given or paid for in the course of such lobbyist’s business or in connection with a personal or social event; provided, however, that a professional lobbyist shall not be prohibited from offering or giving to a public officer, member of the general assembly, local government official, or government employee who is a member of his or her immediate family any such gift, thing of value, meal, beverage, or other item.

In Position Statement 08-01 (Gifts), the Commission stated its desire to interpret Article XXIX in a manner that preserves what it believes was the intent of the electorate - “to improve and promote honesty and integrity in government and to assure the public that those in government are held to standards that place the public interest above their private interests.” The Commission also referenced Section 6, which provides that those who breach the public trust for private gain or induce such breach shall be liable for monetary penalties.

In Position Statement 09-01 (Gifts from Lobbyists and Organizations Represented by Lobbyists), the Commission stated its belief that “Sec. 3(4) creates an absolute ban on gift-giving by professional lobbyists...[E]ven though public officials and

employees are generally bound by the \$50 gift limit, a professional lobbyist may not give gifts or things of value to these individuals at all, in any amount.”

IV. DISCUSSION

The requestor is an “individual who engages himself or herself or is engaged by any other person for pay or for any consideration for lobbying,” as evidenced by his being registered as a lobbyist with the Secretary of State’s office. Therefore, this individual fits squarely within the definition of “professional lobbyist.” Art. XXIX Sec. 2(5).

Article XXIX Sec. 3(4) prohibits a professional lobbyist, personally or on behalf of any other person or entity, from offering or giving any gift or thing of value to any public officer, member of the General Assembly, local government official, or government employee. Meals and beverages are expressly included in that prohibition.

There are two exceptions to the prohibition: Political campaign contributions and members of the professional lobbyist’s immediate family. Neither exception applies to the facts before the Commission today.

The requestor explained that the purpose of these lunches “is to educate legislators on issues that are of importance to the State and the business community, as well as to introduce legislators to statewide business leaders.” However laudable and valuable this purpose may be, it is irrelevant in light of the clear and absolute language in the Constitution.

The Commission, however, reiterates its belief that “lobbying as education and persuasion fulfills an important function in government, and that the free exchange of information and argument should be encouraged.” See Position Statement 09-01. There are many venues in which this activity may be accomplished. If membership-style dining rooms, such as the University Club, do not allow for non-members to pay for their own meals, then another type of restaurant may be chosen, or another type of venue where gift-giving, as contemplated by the Constitution, is not involved.

V. CONCLUSION

CO Const. Art. XXIX Sec. 3(4) prohibits a professional lobbyist from offering to give or giving a gift or other thing of value to a public official or employee. Therefore, a professional lobbyist may not have lunch with a member of the General Assembly or other public official or employee at a venue where the public official or employee is not allowed to pay for his or her own meal.

The Independent Ethics Commission

Nancy E. Friedman, Chairperson

Matt Smith, Vice Chairperson

Sally H. Hopper, Commissioner

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Dated: February 2, 2009