

State of Colorado



INDEPENDENT ETHICS COMMISSION

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Letter Ruling No. 10-01

(Tour and Educational Events Provided by a Non Profit Entity which receives more than 5% of its funding from For Profit Sources)

SUMMARY: It would be a violation of Article XXIX of the Colorado Constitution for members of the General Assembly, who serve on the Interim Water Resources Committee, to receive a scholarship to participate in a tour sponsored by the Colorado Foundation for Water Education, a non-profit entity that receives more than 5% of its funding from for-profit sources under the circumstances described in the request.

I. BACKGROUND

The Independent Ethics Commission ("IEC" or "Commission") has received a request for a letter ruling asking whether the Colorado Foundation for Water Education ("CFWE")¹, a non profit entity, may offer scholarships to up to ten members of the General Assembly to participate on a two day tour of Southwestern Colorado's River Basins. In its request, the CFWE states that the tour will take approximately 100 "lawmakers, state officials, water managers, engineers and attorneys, and other interested members of the public on a 2-day tour of the Dolores and San Juan river basins..."² According to information before the Commission, this is the sixth annual tour

¹ The CFWE has waived confidentiality relating to this request.

² According to the CFWE web site, the tour is open to the public.

sponsored by the CFWE. In previous years participation by legislators who are members of the Interim Water Resources Committee was paid for by the General Assembly. However, the General Assembly has elected not to pay for members' participation this year.

According to the request, the CFWE receives more than 5% of its funding from for-profit sources, although its largest single funder is the Colorado Water Conservation Board ("CWCB"), a state Board which is staffed by employees of the Colorado Department of Natural Resources.³ The tour itself is primarily funded by water districts and the CWCB with a "small number of corporate sponsors." Neither the CFWE nor any of its staff are professional lobbyists, and they do not take a position on legislation.

According to the request, the total cost of the two day tour will be \$750 per person.

II. JURISDICTION

The IEC finds that a member of the General Assembly is subject to the jurisdiction of the Commission. CO Const. Art. XXIX (3)(1).

III. APPLICABLE LAW AND PRECEDENT

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

(2) No public officer, member of the general assembly, local government official, or 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) 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,

³ According to the request, approximately 40% of its funding comes from the Colorado Department of Natural Resources. Most of the CFWE's other funders are water conservation districts, and other quasi governmental organizations. They also receive funding from law firms and engineering firms, and individuals.

from a person, without the 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 solicited, accepted or received the gift or other thing of value.

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

* * *

(f) 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 on a panel, or represent the state or local government, provided that the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities.

IV. DISCUSSION

In Position Statement 08-02 (Travel), the Commission opined that under certain circumstances, payment of expenses for travel that may otherwise be precluded by Article XXIX may nevertheless be permissible if it could be considered a gift to the State, rather than a gift to the covered individual. The Commission listed five criteria that must be satisfied in order for such payment of expenses to be considered a gift to the State. Under the analysis of Position Statement 08-02, payment of travel expenses incurred for a "legitimate state or local government purpose" was excepted from the gift ban of Article XXIX, so long as the travel arrangements were appropriate for the stated purpose, the event itself was no longer than necessary to accomplish the stated purpose, the covered individual was not in a position to take official action with regard to the payer of the expenses, and the travel was approved in accordance with the procedures for the agency or official involved.

While the analysis set forth in Position Statement 08-02 can, in most instances, be conducted in concert with the analyses of the exceptions to the gift ban contained in

Section 3 of Article XXIX, the Commission finds today that the “gift to the state” exception can be applied so broadly as to seriously undermine the gift ban and the narrow exceptions thereto. This exception, therefore, should be used only sparingly, and in those instances in which the legitimate state purpose is overwhelming, and the other factors listed are clearly present. Additionally, it cannot be used in an instance where the facts come close, but do not meet, any of the enumerated exceptions to the gift ban. See, Article XXIX section 3(3).

The Commission believes that the factors relating to the appropriateness of the travel, and the length of the tour are clearly met. The Commission does have concerns, however, that the members of the General Assembly who would be travelling on the tour are in a position to take direct official action with regards to other people going on the tour and participating in the funding of CFWE. Groups such as water conservations districts, CWCB employees, engineering firms, etc. may benefit directly from decisions made by these members of the General Assembly.

The Commission does not mean to imply that the tour would not be beneficial to the members involved. It believes, however, that even in these difficult economic times, tours such as the one described in the request need to be paid for out of state or local funds, or by a nonprofit which receives less than 5% of its funding from for profit sources.

Moreover, this factual situation does not meet the exception set forth in section 3(3)(f) of Article XXIX. Although participation on the tour meets the requirement that the trip is a fact finding mission or trip, and the Committee members would be representing state or local government, according to its submissions to the Commission, CFWE is a

nonprofit entity which receives more than 5% of its funding from for profit sources. CFWE does not contend that, notwithstanding its substantial funding from the CWCB, that it is a state or local government and it is apparent from the submission that CFWE cannot qualify for such a designation. Therefore, the exception set forth in Section 3(3)(f) as to the proscription of gifts to covered individuals would not apply to gifts provided by CFWE.

V. CONCLUSION

It would be a violation of Colorado Constitution Art. XXIX for members of the General Assembly to accept a scholarship from CFWE to attend the tour of Southwestern Colorado River Basins under the circumstances described in the request.

The Independent Ethics Commission

Matt Smith, Chairperson
Dan Grossman, Vice Chairperson
Sally H. Hopper, Commissioner
Larry R. Lasha, Commissioner
Roy Wood, Commissioner

Dated: May 26, 2010