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Letter Ruling 12-01 (Valuation of a Meal)

SUMMARY: For purposes of determining the value of a gift of a meal from a nonprofit organization, the Commission finds that the value of meal is the lowest price available to the event to the general public.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for a letter ruling from the Colorado Nonprofit Association (“Association”)¹, asking the IEC to reconsider its previous decision that in determining the amount of the gift of a meal, the cost of the ticket to the event is determinative. See, Advisory Opinion 10-14 (Acceptance of a Luncheon from a Political Subdivision), at page 4.

According to the request, the Association is an Internal Revenue Code section 501(c)(3) tax exempt organization. The Association “works with and for all of Colorado’s nonprofits to create impact in our communities. (It does) so by providing cost-saving membership benefits, up-to-date resources and practical information to help nonprofits.” For the past 16 years, the Association has hosted an annual fundraising luncheon at which it presents several awards to individuals who have made contributions to the nonprofit community. The cost of the ticket to a member of the

¹ The Association has waived confidentiality relating to this request.

public for the luncheon ranges from \$55 a person to \$90 per person, depending upon whether or not the individual is a member of the Association and the date of registration for the event.

Five state-wide elected officials including the Governor, the Lieutenant Governor and the Attorney General, are invited to give a speech or make a presentation. They receive a complimentary ticket to the event. Because the five public officials speak and/or answer questions as part of the Association's scheduled program, their tickets fall within the exception to the gift ban contained in Article XXIX, section 3(3)(e). The Association also invites other public employees and officials to attend the luncheon on a complimentary basis, to improve public employees and officials' familiarity with the nonprofit community and vice-versa.

The Association contends that the value of each of the complimentary tickets should be considered to be the cost of the meal to the Association, \$41.91, therefore falling below the \$53 gift limit. The Association cites Internal Revenue Service ("IRS") guidance for its position. IRS Publication 526 (2010) states at page 3 that in determining the amount of a charitable contribution for purposes of an income tax deduction, the taxpayer should look at the cost to the donor. If the amount paid by the donor is more than the cost to the donee, then the difference is deductible as a charitable contribution.

II. JURISDICTION

The IEC issues letter rulings pursuant to C.R.S. §24-18.5-101(2)(b)(1). The question concerns gifts to public officials and employees who are subject to the jurisdiction of the Commission.

III. APPLICABLE LAW

Article XXIX, section 3, 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)**² 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 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. (emphasis supplied).

III. DISCUSSION

The question of how a meal should be valued depends on the construction of the terms “fair market value” and “aggregate actual cost” contained in Article XXIX. This construction should guide the Commission in its determination of whether the focus should be on the cost of the lunch paid provided by the Association, \$41.91, or instead, on the cost of a ticket to the event, \$55 to \$90 per ticket. The Commission has reviewed advisory opinions from several other jurisdictions, and other ethics commissions are split on whether the gift is the amount of the ticket, or the cost of the meal. See, e.g., Massachusetts Ethics Commission-COI-92-32, NYC Conflicts of Interest Board, Advisory Opinion No. 2000-4; City of Honolulu Ethics Commission Advisory Opinion 2003-3 (finding that the value of the gift is the cost of the ticket), and Ohio Ethics Commission Advisory Opinion 2009-03, and Hawaii State Ethics Commission (finding that the value of the gift is the actual cost of the meal to the donor).

² Pursuant to Position Statement 11-01, the applicable amount is now fifty three dollars (\$53).

These opinions analyze their respective states' statutes and codes, or in some circumstances, make a policy decision regarding the appropriate interpretation.

Neither the term "fair market value" nor the term "aggregate actual cost" is defined in the Constitution or clarified in the Review and Comment Hearing Transcript or in the Blue Book. However, the term "fair market value" is commonly used in Colorado statutes and the term typically is defined in case law as the price at which property would change hands between a willing buyer and a willing seller when neither party is under an obligation to act. *Pueblo Bancorporation v. Lindoe, Inc.*, 63 P.3d 353, 362 (Colo. 2003); *Hawes v. Colo. Div. of Insurance*, 32 P.3d 571, 574 (Colo.App. 2001).

In the usual case of sale of consumer goods or services, the price to the manufacturer or provider is irrelevant. The fair market value is the price the item is offered for sale or service. The price of a meal at a restaurant is not the cost of providing the meal, but the price listed on the menu. The fair market value is the price the item is offered for sale or service. This amount of the gift, therefore, is the price that the ticket is offered to the general public. Because the price for the event is staggered based on when the ticket is purchased, the Commission finds that the value of the gift is the lowest price at which the ticket is available to the general public, for 2012, \$65. The IEC believes that in the situation where the actual ticket price is higher than the gift limit, but close, a public employee may pay the difference between the gift limit and the price of the ticket, in this example, \$12.

In addition, the Association may consider publicly setting a "government employee and official" price which would be within the gift ban limit.

IV. CONCLUSION

The Commission finds that in determining the value of a complimentary ticket to a luncheon for purposes of the gift ban, the appropriate valuation is the lowest cost at which the ticket is available to the general public.

The Independent Ethics Commission

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