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Letter Ruling 14-01

(Paying and Non-Paying Attendees at an Event)

SUMMARY:

It would not be a violation of Colorado Constitution Art. XXIX for a member of the general assembly and their staff to attend educational events sponsored by the Colorado Health Institute, a nonprofit entity, under the new circumstances described in the request.

I. BACKGROUND

The Colorado Health Institute (“CHI”) submitted a request to determine whether “opening up part of the conference to paying, non-legislative attendees in any way changes the nature of the event in such a way as to affect” Letter Ruling 09-05. In Letter Ruling 09-05 the Independent Ethics Commission (“IEC” or “Commission”) found it would not be a violation of Colorado Constitution Art. XXIX for a member of the general assembly and their staff to attend the educational events sponsored by the CHI.

CHI is a non-profit entity with no lobbying activities, which sponsors a two day health policy conference and provides meals and travel expenses in excess of \$50.00 for the participating members of the general assembly under the gift ban’s exception 3(3)(f). The Commission determined that the expenses being paid by CHI were

reasonable, the conference was educational in nature, and it was sponsored by a non-profit entity.

The only factual change from Letter Ruling request 09-05 to this request is that paying non-legislators would attend the second day of the two day conference, the keynote address and the dinner on the first night of the conference. Some of the invitees are covered individuals under Article XXIX. The CHI sent approximately 3000 invitations to policy-oriented and government organizations in the hope that 75 to 100 staff members will join the conference. Examples of invitees include the Colorado Trust and the Rose Community Foundation, the Center for Improving Value in Healthcare, the Center for Law and Policy, the Colorado Community Health network, the Center for Nursing Excellence, the Colorado Department of Healthcare and Financing, the Colorado Department of Public Health and Environment and many other policy oriented organizations and state agencies.

The first day of the conference is designed as it was in 2009, primarily educational for new legislators concerning current topics in healthcare policy and learning how to navigate government offices related to healthcare. At the dinner, a panel of veteran lawmakers will speak about hot topics in health care law.

The plan for the second day of the conference is to have discussions with many different stakeholders who are interested in healthcare policy and implementation in Colorado. The day starts with a morning keynote speaker, followed by break-out sessions and panels run by CHI staff in the early afternoon, and a Colorado Governor's panel discussion before closing. The question before the Commission is whether any rules under Article XXIX would be violated if CHI invited paying staff members from

policy-oriented organizations and state agencies to the conference to attend along with the non-paying legislators.

II. JURISDICTION

The IEC finds that members of the general assembly are subject to the Commission's jurisdiction. CO Const. Art. XXIX, sec. 3(1). Employees of other policy-oriented organizations are not subject to the jurisdiction of the IEC unless they are a state official, employee or contractor. CO Const. Art. XXIX, sec. 2(1).

III. APPLICABLE LAW

Section 1 of Article XXIX (Purposes and Findings) provides that:

- (a) The conduct of public officers, members of the general assembly, local government officials and government employees must hold the respect and confidence of the people;
- (b) They shall carry out their duties for the benefit of the people of the state;
- (c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated;
- (d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust

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

- (1) No public officer, member of the general assembly, local government official, or government employee shall accept or receive any money, forbearance, or forgiveness of indebtedness from any person, without such 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 accepted or received the money, forbearance or forgiveness of indebtedness.
- (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) [now \$53] 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.

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

- (e) Reasonable expenses paid by a nonprofit organizations . . . 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 nonprofit organizations receives less than five percent (5%) of its funding from for-profit organizations or entities.

IV. DISCUSSION

Section 3 of Article XXIX prohibits a public official or employee from soliciting, accepting or receiving any gift or other thing of value worth more than \$53.00, as adjusted for inflation, in any calendar year from a person without that person receiving lawful consideration of equal or greater value in return, unless it falls under an enumerated exception. Exception 3(3)(f) includes reasonable expenses from a non-profit entity for a convention, fact-finding mission, trip or meeting if the government official or employee is representing the state. Exception 3(3)(f) continues to apply to the legislators in this instance since circumstances are the same as in Letter Ruling 09-05.

Including participants that will pay for the conference, while legislators do not, does not violate any rules under Article XXIX and does not change the original analysis

in Letter Ruling 09-05. It is up to the discretion of the CHI to make determinations about charging for events.

It should be noted that CHI invited two firms that provide legislative monitoring for them and are registered lobbyists to attend the second day of the conference. However, contracts signed with both firms expressly prohibit any lobbying activities when engaged by CHI.

The Commission reminds the legislators that they are covered individuals who are subject to the proscriptions of Article XXIX throughout the event. Meals, gifts, outings and other extracurricular activities that are outside of the scope of the conference itself likely would be considered gifts subject to the prohibition contained in Section 3 of Article XXIX. Legislators should exercise particular caution to avoid accepting any benefits provided by the two firms that provide legislative monitoring for CHI.

IV. CONCLUSION

The Commission believes it would not be a violation of Colorado Constitution Art. XXIX for a member of the general assembly and their staff to attend educational events sponsored by the Colorado Health Institute, a nonprofit entity, under the new circumstances described in the request. The Commission cautions public officials and employees that this opinion is based on the specific facts presented in this request, and that different facts could produce a different result. The IEC therefore encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings.

The Independent Ethics Commission

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Dated: September 8, 2014