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## ***Letter Ruling 14-03*** (Solicitation for Benevolent Trust)

### **I. Summary:**

It would not be a violation of Article XXIX for a nonprofit benevolent fund to solicit donations to establish a relief fund offering monetary assistance to active and retired federal law enforcement officers and active and retired members of state, county and municipal police departments who have died or have been injured in the line of duty or who are suffering from illness, disease or injury, and the spouses, children, families and designated beneficiaries of such individuals under the terms specifically described in the request and herein.

### **II. Background:**

The requester is a lawyer representing two Fraternal Order of Police benevolent funds (“funds”). One fund has been granted nonprofit status by the Internal Revenue Service, the other is awaiting that designation. At this time neither fund has solicited donations or made any distributions, while they await a determination of propriety from the Independent Ethics Commission. The funds were conceived to provide limited, immediate financial assistance to officers who have either been injured or diagnosed with an illness while on active duty or retired, and their family members; and family members of those officers who have been killed in the line of duty.

The funds will solicit and collect monetary contributions from active and retired members of state, county and municipal police and the general public. The funds are intended to benefit

active and retired federal law enforcement officers and active and retired members of state, county and municipal police departments and their families, living and deceased, under the circumstances described above. It is anticipated that the amounts raised by each fund will total less than \$15,000 on an annual basis and individual distributions will typically range anywhere from a \$200 to less than \$2,000. The monies raised through this effort are intended to be for relatively small, emergency distributions and are not intended to replace formal institutionalized options such as long term disability, health insurance, institutionalized death benefits, etc.

Each fund will be governed by officers and a board of directors, all of whom will be volunteers. Neither fund will have members or employees. The board of directors for each Fund will adopt by resolution a corporate policy relating to conduct required for participation in the Fund.

Among other safeguards, the Code of Conduct states that no director or officer of either fund shall “make agreement to accept, or solicit any gift, donation, money, item of value, sexual favor, testimonial, appointment or personal advantage, or the promise of solicitation of the same for the purpose of obtaining special privileges or personal gain, whether monetary or otherwise, by a Fund donor, whether actual or prospective, or any member of the general public.”

The legal representative for the funds seeks a ruling from the IEC about the permissibility of its activities, specifically in providing limited, emergency monetary assistance to law enforcement officers who suffer injuries or are killed in the line of duty, or who are diagnosed with illnesses or disease following their period of service, and their family members. The members of the respective Fraternal Orders sought to create the funds because they perceive a need in the law enforcement community to provide some financial assistance to officers in the described

situations. The requester indicates a belief that such monetary assistance as would be provided by the fund is exempted from the Article XXIX “gift ban” as compensation paid or incentive given to the recipient in the normal course of business. It is argued that the need for assistance is related directly to the duties of the job, and, therefore falls within the exception found in section 3(3)(h) of Article XXIX of the Colorado Constitution.

Funds will be solicited from law enforcement personnel at the federal, state, county and municipal levels both in and outside of Colorado and from the public. The requester indicates the donation of funds would be strictly voluntary and not an expectation or requirement of any donor. Protections will be implemented, including through the Code of Conduct referenced above, to ensure that donations from other officers are voluntary in nature, and would not be compelled or result from pressure by supervisors or co-workers. Further, the act of soliciting funds will be removed from the expectation that donations will lead to the influence or expectation of “special treatment” under the law for such donations. Donations to the fund would not be accepted from lobbyists, vendors or others with whom the funds transact business, or if an appearance of impropriety might result from the acceptance of donations from any specific source. Neither fund is a political entity nor is there a contemplation that either fund will participate in political activity.

To the extent practicable, the goal is to keep donor identities and amounts confidential. Where that is not possible, (i.e. face to face fundraising during a community event or tournament, where identity is obvious) the Code of Conduct contains provisions to ensure that no donations are solicited or accepted where there is a tie to a police complainant, witness, defendant or arrestee

involved in an outstanding case. A disinterested third party may be engaged to collect and deposit donations, advise donors regarding the tax exempt nature of the gifts, and advise each fund regarding donation amounts, etc. The funds also plan to engage in community based fund raising efforts including bake sales and farmer's market type sales where they will offer small items like homemade baked goods, t shirts, stuffed animals or other items with police insignia for prices ranging from \$1 to \$25.00. Each fund also plans to host an annual summer golf tournament to raise donations. The tournament would be open to the general public. Any prizes offered at the tournaments will be donated and of relatively low value.

The request details how the funds will be administered including application protocols in both standard and emergent situations. In each instance, distribution will only be made upon an affirmative vote of a majority of the directors. Distribution amounts may vary and will depend on availability of funds.

### **III. Jurisdiction:**

The IEC finds that employees of a local, state or municipal agency, including police officers, are "government employees" subject to the jurisdiction of the Commission. Colo. Const. Art. XXIX (2)(1). Thus, as to currently serving officers, the Commission has jurisdiction. A letter ruling is the appropriate venue to address this issue as it is a response to a written request by a person who is not a public officer, member of the General Assembly, local government official, or government employee. Rule 3A(7).

As to retired officers, officers who are killed in the line of duty, and family members including spouses and children, the Commission finds those individuals are not covered individuals and the

Commission does not, in the absence of special circumstances, have jurisdiction over them. As such, donations to or on behalf of those individuals is outside the purview of the IEC, and will not be discussed in this Ruling.

#### **IV. Applicable Law:**

Section 3 of Article XXIX 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 (\$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, 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:
  - (h) A component of the compensation paid or other incentive given to the recipient in the normal course of employment.

#### **V. Discussion:**

- A. The funds in this instance may qualify for an exception to the "gift ban" under Article XXIX 3(3)(h) as incentives given in the normal course of employment.

The Commission addressed contributions to covered individuals in Advisory Opinion 10-04. In that instance the IEC approved the donation of financial assistance by employees of state agencies to other state employees suffering economic hardship as a result of the mandatory furloughs and budget reductions impacting state employees. Donations in that instance were

strictly voluntary and were anonymous; recipients were required to apply to a committee established to review applications and grant relief. Though the specific circumstances of this request differ, many of the details relating to how the donations would be handled are similar. The Commission stated in AO 10-04 that the financial assistance program as described was directly related to the employment of the covered employees.

However, it should be noted that the Commission was cautious in issuing AO-04 as it related to solicitation to the entire group (of covered individuals) and to insure that no pressure be made to exact donations from unwilling contributors.

Subsection (3)(h) carves out an exception for compensation and other incentives to covered employees in the normal course of employment. While compensation is typically considered to be funds received from one's employer, Black's Law Dictionary defines it as making equivalent return to, recompense or pay. More generally, compensation may be defined as something given or received as an equivalent for service, debt, loss, injury suffering, lack, etc.

In this instance, officers or their family members will be "compensated" with reasonable consideration given to job related injuries, illnesses, or death from sources directly related to their employment – i.e. Fraternal Orders of Police. To deny financial assistance to officers or their families, especially those killed or injured in the line of duty, would be to penalize them for their service by denying them benefits related to their sacrifice that others in the community, not employed by a public entity, may otherwise be entitled to receive.

The Commission is concerned that two possibilities exist in the current request that were not present in AO-13, including the ability to pressure current employees to contribute to the benevolent fund and the perception that the contributing public may be perceived as being entitled to benefits in exchange for their contributions.

The Requestor has suggested a Code of Conduct to prevent ethical violations from those who may be involved in fundraising activities and in the distribution of funds. Such a code will go a long way in giving guidance to participants, but the Commission wants to be clear that while solicitations and distributions may be conducted ethically, the Commission does not in this opinion condone unethical behavior if it exceeds the activity authorized. See, AO-10-07; See also, AO-11-04.

While the Commission authorizes the fundraising requests made in the limited circumstances outlined today, it does so with express caveats. The Commission expressly states that no conduct or threat to reward or punish employees based upon their participation in fundraising activities is allowed by this opinion. No employee should suffer any pressure to contribute to the benevolent fund in connection with their employment. The Commission further expressly states that no statement or expression that an official act will be granted or denied because of contributions made to the benevolent fund. Neither the public display of sponsorship nor the collection of funds in uniform should be encouraged as part of the fundraising efforts. The Requester should remain mindful as well that they are neither required to accept funds and may avoid potential appearances of impropriety by declining contributions from sources which might attempt to influence official action. Additionally, no funds may be solicited or received from lobbyists,

vendors with whom the funds do business, or any other source which may lead to the appearance of an impropriety.

The Commission also cautions the individuals associated with the funds to be aware of public perception in the conducting of their activities. Lastly, the distribution of funds should be made to worthy recipients without regard to participation in fundraising or service to the benevolent fund administration.

## **VI. Conclusion:**

The Commission believes that an exception to the “gift ban” of Article XXIX supports the activities of the benevolent funds as detailed in this Request. The Commission cautions public officials and employees that the opinion of the Commission in this matter is based on the specific facts presented in this request, and that different facts could produce a different result. In this instance, the IEC wishes to strongly emphasize the unique nature of the facts presented and the limited scope of this Opinion. Further the Commission cautions the parties involved with this request that, should their conduct or efforts exceed the facts presented with regard to this Request, the actual conduct may not be covered by the rationale contained herein. The IEC encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings. Pursuant to C.R.S. §24-18.5-101, the name of the person requesting the ruling and other identifying information has been redacted.

### **The Independent Ethics Commission**

Rosemary Marshall, *Chairperson*

Matt Smith, *Vice Chairperson*

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Bill Pinkham, *Commissioner*

Dated: January 5, 2014