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Amy C. DeVan, *Executive Director*

Letter Ruling 15-01

(Acceptance of Donations for Door Prizes)

Summary: It would not be a violation of Colorado Constitution Art. XXIX for the Colorado Information Management Association (CIMA) and the Colorado Government Association of Information Technology (CGAIT) to accept, and distribute, donated items as door prizes at their joint educational conference under the circumstances of this request.

I. Background

The requester, who is a government employee, is making the request on behalf of two trade organizations, CIMA and CGAIT, regarding whether the organizations may accept items donated by vendors to distribute as door prizes during the fall conference jointly hosted by the entities. Neither entity is a government organization.¹

The Colorado Information Management Association is an educational association for government information technology professionals or technicians. No annual or monthly membership fees are required; those interested in becoming members simply sign up for the membership list.

¹ Although the requester in this instance is a government employee, she is submitting the request on behalf of the two non-governmental organizations in her capacity as conference planner. The request is not submitted pursuant to her duties as a state employee. Thus this matter is being addressed through a Letter Ruling rather than an Advisory Opinion. The categorization of the request does not change the outcome based on the facts presented.

The Colorado Government Association of Information Technology was formed to facilitate networking, collaboration and education amongst government information technology professionals. CGAIT is a bit more detailed in its membership structure than CIMA. Each city, county or other political subdivision may appoint a member to represent it with CGAIT. Each member is entitled to vote on matters before CGAIT. In addition there are associate, affiliate and honorary members who must meet specific criteria and do not vote. Membership fees are determined by the population size of the entity the member is representing.

CIMA and CGAIT jointly host a fall conference, which is intended as an educational forum for attendees who are government information technology employees from entities around the State (including state, county, city, higher education, school districts, etc.) This year's conference will be held September 23-25 at the Hotel Elegante in Colorado Springs.² The conference is funded in part by corporate sponsorships wherein corporations pay for booths/tables for vendor shows, as well as by registration fees paid by the attendees. The vendor shows will be scheduled at specific times the first two conference days. The only sales activities at the conference take place during the vendor shows, which are a voluntary portion of the conference – attendees are not required to attend the shows or interact with the vendors if they choose not to.

The various vendors typically like to donate items for the conference. Most items are small and well under the \$59 gift limit of Article XXIX, like lip balm, pens, notepads, post it pads, etc. These items will be provided by vendors at their tables or booths during the vendor shows. In addition, some vendors wish to provide larger ticket items, over \$59 in value, to serve as door

² Due to timing, the Commission gave verbal approval for the activity discussed, with the understanding that the written opinion would be issued after the conference took place.

prizes. The two associations will also be providing door prize items.

Door prize items may range in value from a gift card over the \$59 limit to an item such as an iPad. It is anticipated the higher value items will be limited in number. The items will be donated to the organizations, which will then hold random drawings to award them. Each attendee present at the conference will automatically be entered into the drawings based on their conference registration; only one prize may be awarded per attendee per conference. The names of present attendees will be randomly drawn, and that attendee will win the prize.

CIMA and CGAIT also have notified vendors that donation of an item is strictly voluntary and is unrelated to any government contract they may have or seek in the future. No special or additional consideration will be given to vendors who donate prize items.

Because the nominal value items provided by vendors are excepted under Article XXIX §3(3)(b), an unsolicited item of trivial value less than \$59, those would appear to not be an issue necessitating review. The question before the IEC, then, is whether the door prizes may be awarded and accepted by the attending covered individuals under the circumstances described in this request.

II. Jurisdiction

The IEC finds that employees of state and local entities, as described, as well as various agencies including institutions of higher education, who comprise the membership of CIMA and CGAIT are government employees and therefore subject to the jurisdiction of the Commission. *See Colo.*

Const. Art. XXIX, sec 2(1) and (3). However, the IEC finds that it does not have jurisdiction over the entities CIMA and CGAIT, as they are trade organizations and not government entities; albeit trade organizations comprised of government employees. Thus the question over which the Commission has jurisdiction is whether the door prizes, given the circumstances under which they are donated, may be distributed by the entities to the attendees, who in most circumstances will be covered individuals for purposes of Article XXIX. Each individual bears personal responsibility for his or her acceptance of the item.

This letter ruling is intended to give guidance for those employees who are covered individuals for purposes of Article XXIX. Individuals should also consult the ethics rules for their county or municipality with regard to these issues.

III. Applicable Law

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 thing of value having either a fair market value or aggregate actual cost greater than fifty (\$50) dollars in any calendar year, including but not limited to gifts, loans, 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.

IV. Discussion

The Commission made its first statement regarding gifts in Position Statement 08-01. On the issue of prizes, and specifically those awarded as the result of a raffle, which is akin to the situation here, the IEC stated “[a]cceptance of winnings in raffles, lotteries or silent auctions is not a violation of the public trust and is therefore permissible.” Additionally, “[i]n those

situations where a ticket was not purchased (e.g. a card put into a fishbowl), a public employee or official has an equal opportunity to win as the other entrants. Therefore, the Commission finds that the acceptance of winnings in raffles, lotteries and silent auctions is permissible, provided that these contests are not rigged in favor of the public employee or official based upon his or her governmental status.” This scenario mirrors that envisioned in PS 08-01, in that names will be entered into a fishbowl upon confirmed registration and drawn out during the conference. All attendees have an equal chance of winning and there is no preference given to one attendee over another. Also not all registrants may be covered individuals, as noted above.

A question here would appear to be whether this analysis changes based on the fact that vendors who may have business with the State are among those providing the door prizes, and whether there is a conflict of interest or appearance of impropriety inherent in that scenario. Although the Commission has previously voiced concern that gifts accepted not lend themselves to either perception, it is worth noting that PS 08-01 did not distinguish the source of the gift or prize item in determining acceptability. This would appear to be especially true in a situation where – as here – the gifts are donated to the entities, which are then holding the prize drawing for the attendees. Thus the source of the items, as per those attending the conference, is the two sponsoring organizations, a scenario that is not uncommon in conference settings.

It is important to note that what is being contemplated in this instance is a single prize donated by a vendor for purposes of a door prize, of relatively modest value, through a random selection process. The analysis in this Letter Ruling would not apply if, for instance, a vendor were to donate a similar item to every single registrant of the conference. This Ruling is limited in scope

and should be interpreted as such.

In Advisory Opinion 14-01 the Commission determined that it was impermissible for the Arapahoe County Clerk and Recorder to accept a box of gifts from the Denver Broncos, which ranged in value from nominal to potentially quite valuable. In so finding, the Commission determined the acceptance of such gifts was prohibited as being over \$53, and none of the Article XXIX exceptions applied. The difference in that instance would appear to be twofold – first, the items were not distributed as prizes in which all entrants, covered individuals and not, had an equal chance of winning; and second, there was a relationship between the Denver Broncos organization and the Arapahoe County Clerk and Recorder that might be susceptible to the appearance of impropriety. Neither of those scenarios are present here; even though there is the possibility of a gift item ultimately being claimed as a prize by a person with whom the vendor may have a current relationship, the gift is remote at that time, and is not donated with the intent to influence public decision making, since given the scenario described the vendor has no control over the party to whom the gift is awarded. Additionally, both covered and non-covered individuals are eligible. Thus it would appear PS 08-01, rather than AO 14-01, govern the analysis in this situation.

Additionally, in this instance the organizations have taken the proactive additional step of advising any donating companies that their donation is strictly voluntary and will not be considered or weighed in the context of any contracts or business with the State. The Commission wishes to take this opportunity, however, to strongly recommend that parties in this position also take steps to guarantee anonymity of the donor – including the removal of

identifying labels affixed to the prizes. A list of donors may be provided in the conference program, without necessarily identifying the specific prize donated. This will further ensure a buffer for conflict of interest purposes. To fall within this Letter Ruling, and the guidance it provides, this anonymity must be preserved.

Finally, it is important that all covered individuals are mindful of the prohibition in Article XXIX related to lobbyists. Section 3(4) states that “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...” Thus it would behoove the organizations, given the anonymity discussed above and the fact that the recipient will presumably not know the identity of the donor, to ensure that it does not solicit or accept prize donations from lobbyists, which may place the recipients in the uncomfortable position of violating Article XXIX without being aware they are doing so.

V. Conclusion

For the reasons noted above, it would not be a violation of Colorado Constitution Article XXIX for vendors who may or may not be doing business with the state to donate items to be used as door prizes for the joint CIMA/CGAIT fall conference under the circumstances of this request. The Commission cautions public officials and employees that this opinion is based on the specific facts presented in the request and that different facts could produce a different result. The IEC, therefore, encourages individuals with particular questions to request fact specific advice for their circumstances through requests for advisory opinions or letter rulings.

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November 6, 2015