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Letter Ruling 16-02

(Acceptance of Waiver of Registration Fee)

Summary: It would be a violation of Colorado Constitution Art. XXIX for elected officials and their staff to accept a waiver of registration fees for the 2016 Rocky Mountain Energy Summit under the circumstances described in the request.

I. Background

The Colorado Oil & Gas Association (“COGA”) submitted a request to the Independent Ethics Commission (“IEC” or “Commission”) asking whether elected officials and their staff may accept complimentary registration to the 2016 Rocky Mountain Energy Summit. The request states:

The Rocky Mountain Energy Summit is an annual conference hosted by COGA. COGA is a trade association representing over 333 member companies who are related to the oil and gas industry. The purpose of the conference is to bring together a variety of stakeholders from around the world to discuss emerging issues in oil and gas related to technology, markets, policy, leadership, and other topics.

The conference is open to any member of the public. Attendance is expected to include professionals from oil and gas companies, investment and commercial bankers, geologists, geophysicists, landmen, producers, procurement managers, pipeline professionals, environmental leaders, policy makers, academic institutions, and members of the media. “Additional complimentary registrations are offered to members of academia, NGOs and non-profits, and other community leaders.”

COGA is a non-profit entity under IRS § 501(c)(6), but receives the majority of its funding from for-profit sources. Primarily the conference is funded through the payment of conference fees by participants who attend and sponsorships. The value of the conference registration is \$570.

II. Jurisdiction

Within the context of COGA’s request, the term “elected officials” is deemed to mean either

elected “local government officials” or “public officers”, as those terms are defined by Colo. Const. Article XXIX, sec. 2(3) and (6). For purposes of the request, the term “elected officials” also includes members of the General Assembly. “Staff” of elected officials is deemed to mean “government employee” as defined by Colo. Const. Article XXIX, sec. 2(1).

Elected officials and the staff of elected officials, as those terms are used in this request, are therefore subject to the jurisdiction of the Commission under Colo. Const. Article XXIX, sec. 3.

III. Applicable Law

The application portion of Article XXIX, section 3 (the "gift ban") reads in relevant part:

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 \$59) 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

A. Gift to a Covered Individual

In Position Statement 12-01 the Commission ruled that the gift ban does not apply if the gift is to a governmental agency, rather than an individual. The initial question is "whether a public benefit is conferred to a governmental entity as distinct from an individual benefit conferred to the covered individual."

The factors to consider in determining if a gift is to a covered individual or to a governmental entity are as follows:

- 1) Is the gift to a specific individual or to the designee of an agency?
- 2) Is the offer made *ex officio*?
- 3) Is the travel [or, in this case, the conference] related to the public duties of the traveler [attendee]?
- 4) Is there a potential conflict of interest or appearance of impropriety in acceptance of the gift?
- 5) Is the purpose of the trip [conference] primarily educational?

Under the circumstances of this request, the waiver of registration fees will be offered to numerous, unnamed elected officials and the staff thereof. An invitation to the entire General Assembly, and their staff, presents a difficult scenario for analysis under Position Statement 12-01, especially as to whether the invitation is made in an *ex officio* capacity. While the

legislature acts as a whole in passing legislation, individual legislators act in different capacities, such as bill sponsors, co-sponsors, committee members, not to mention their individual duties to assess and vote on measures that come before the House of Representatives and the Senate. Additionally, the myriad of duties that each legislator may have toward a particular bill or even the subject matter of a bill may be far different than that of a legislative colleague. While the Commission does not rule out the possible invitation of an individual legislator or group of legislators as meeting a test of *ex officio* status or within the given duties of the legislator or group of legislators as contemplated by Position Statement 12-01, a blanket invitation to the entire General Assembly is beyond the “governmental entity” contemplated by the Position Statement.

The Commission finds that there is potential conflict of interest or at least the appearance of impropriety in acceptance of the registration waiver and mingling with potential attendees, including oil and gas companies, bankers, producers, and environmental leaders. The public will undoubtedly view the waiver of the conference fee as an opportunity for attendees to gain access to and to engage policy makers in subjects related to the conference and future policy making efforts.

The Commission does not dispute that the purpose of the conference is educational.¹

In considering the above factors, the Commission finds that the request does not fall within the factors outlined in Position Statement 12-01. Thus, the request will be analyzed as a gift to covered individuals pursuant to Article XXIX.

B. Application of Article XXIX, section 3(3)

Having determined the applicability of Article XXIX, sec. 3, the Commission next addresses whether any of the exceptions of sec. 3(3) apply. Sections 3(3)(a)-(d), (g), and (h) are inapplicable. Section 3(3)(f) is inapplicable because COGA receives the majority of its funding from for-profit sources.²

The sole remaining exception is sec. 3(3)(e), which reads as follows:

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

* * *

(e) Admission to, and the cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or to answer questions as part of a scheduled program[.]

¹ Whether the purpose of the conference is educational is a factor to be considered under Position Statement 12-01 to determine whether the gift is to a covered individual. While the Commission understands that the request to waive the registration fee for members of the General Assembly and their staff might prove to be an invaluable educational opportunity for those choosing to attend the conference, Article XXIX provides no specific exception for educational activities, as such.

² Note that previous Letter Ruling 09-05 is distinguished under Article XXIX, Section 3(3)(f), as involving payment by a non-profit entity receiving less than 5% of its funding from for-profit sources, even though Letter Ruling 09-05 was analyzed under prior Position Statement 08-01 and prior to the adoption of Position Statement 12-01.

Section 3(3)(e) is inapplicable because there is no indication that the numerous possible attendees that are the subject of this request will “appear to speak or to answer questions as part of a scheduled program”.

C. Letter Ruling 10-01

The Commission also notes that this request is similar to the request in Letter Ruling 10-01. In that matter the requestor was a nonprofit entity that was sponsoring a 2-day tour of Southwestern Colorado’s River Basins. The sponsor requested an opinion on whether it could offer scholarships to some members of the General Assembly to attend the tour. The sponsor of the event also received more than 5% of its funding from for-profit sources. The Commission found no exception to the gift ban and that acceptance of the scholarship would violate Article XXIX.

V. Conclusion

It would be a violation of Colorado Constitution Article XXIX for elected officials and the staff thereof to accept the waiver of the registration fees related to this request. The Commission cautions public official and employees that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission therefore encourages individuals with particular questions to request more fact specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

The Independent Ethics Commission

Bob Bacon, *Vice-Chair*
April Jones, *Commissioner*
Matt Smith, *Commissioner*

Dated: June 30, 2016