

# State of Colorado



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**Dino Ioannides**, *Executive Director*

## **Letter Ruling 21-01**

(Acceptance of Fundraising Disbursements for Medical Expenses)

**Summary:** Under the facts and circumstances of this case, and consistent with the discussion herein, it would not be a violation of Article XXIX for the Requester to conduct a fundraising event on behalf of a Greeley city councilmember to cover medical expenses arising from that councilmember's serious medical condition.

### **I. Background**

Requester is a student at University Schools in Greeley, Colorado. Requester proposes to conduct fundraising activities for an employee at University Schools who is undergoing expensive medical treatments for a serious disease. The University Schools employee (the "beneficiary") also happens to be an at-large member of the Greeley City Council.

Requester proposes that the fundraiser will be comprised of a golf tournament and a GoFundMe web page. The request states:

The golf tournament will involve requests for hole sponsors by local businesses, a reverse raffle, the purchase of mulligans (do overs) and hole contests, and team registration fees. The breakdown of the golf tournament money has not been fully decided upon. It will depend largely on the amount [sic] of teams that we have sign up and how many hole sponsors we can get. [W]e ... will be 100% transparent with all of the money raised. The GoFundMe page will be available to any of [the beneficiary's] co-workers, friends, family that don't wish to golf, but want to support [the beneficiary].

Initially, Requester contemplated using a blind trust to manage the funds raised. However, Requester now indicates that the cost of establishing a blind trust may be more than the fundraising efforts will realize. Requester therefore proposes another option, in which a banking account will be established with the beneficiary having no access to the account.

Initially, Requester placed no limits on individual GoFundMe contributions. During the meeting with the Commission, however, Requester amended its letter ruling request by limiting the amount of individual GoFundMe contributions to \$100.

Requester has disclosed that she and her family do not live in Greeley and, therefore, they are not constituents of the beneficiary in his role on the Greeley City Council. Requester does not intend the fundraiser to be related to the beneficiary's political activities. Requester and her mother have been acquainted with the beneficiary for several years. Requester's mother has been a co-worker with the beneficiary at several different places of employment, including University Schools. Requester describes her relationship with the beneficiary as follows:

[Beneficiary] is a pillar in our [c]ommunity. He takes the time to know all of the students, K-12, by name. He is always in the halls to laugh and tease and watch out for us. Most importantly, [the beneficiary] makes sure that we are safe when we are at school, and unfortunately, in the world that we live in today, that is invaluable.

And again:

[The purpose of the fundraiser is] to support someone who means a lot to me, in one of the most difficult and scary times of his life.

Requester seeks guidance on three questions: (1) Can Requester hold a fundraising golf tournament for the benefit of the beneficiary? (2) Can Requester link a GoFundMe page to the golf tournament? (3) Can the beneficiary post the fundraisers to his private Facebook page to let his co-workers, friends, and family know about the fundraiser?

## **II. Jurisdiction**

Any person who is not a public officer, member of the general assembly, local government official, or government employee may submit a request to the commission for a letter ruling concerning whether potential conduct of the person making the request satisfies the requirements of article XXIX. § 24-18.5-101(4)(b)(III), C.R.S.

The Commission has jurisdiction over "local government official[s]," meaning "an elected or appointed official of a local government." Colo. Const. art. XXIX § 2(3). However, Section 7 of Article XXIX provides a carve-out from the provisions of Article XXIX for employees and officials of "home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by this article."

Greeley is a home rule municipality. Colo. Const. art. XX, § 9, Greeley City Charter, art. 1, § 1-3. Greeley has adopted a resolution entitled "Policies and Protocol" that contains a "Code of Ethics and Code of Conduct" for city councilmembers and the mayor. That Charter contains a gift ban provision and conflict of interest provisions, in addition to specific prohibitions on conduct that is unprofessional or political in nature. The gift ban prohibits Greeley officials from accepting anything of value from any person if that gift is intended to influence or reward the official in their performance of official duties. Code of Ethics, § 4.3. There are no exceptions. Separately, the resolution prohibits Greeley officials from securing special privileges or exemptions not available to all citizens. *Id.*

Because no public official or employee of Greeley appears before the Commission, the

Commission is hesitant to rule on whether Greeley’s Code of Ethics addresses the matters in Article XXIX. Further, upon inquiry from Requester, the Greeley city attorney recommended that Requester seek an opinion from the Commission as to the propriety of her fundraising proposal. Therefore, the Commission exercises jurisdiction over this request without analyzing the substantive provisions of Greeley’s code or the procedures that Greeley provides to effectuate those provisions. The Commission’s exercise of jurisdiction is without prejudice to the possibility that, in an adjudicatory proceeding, it may reach a different result.

### **III. Applicable Law**

Section 3(1) of Article XXIX of the Colorado Constitution provides:

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.

Section 3(3) of Article XXIX of the Colorado Constitution provides, in pertinent part:

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

\* \* \*

(g) Given by an individual who is a relative or personal friend of the recipient on a special occasion.

Section 3(4) of Article XXIX of the Colorado Constitution provides:

Notwithstanding any provisions of this section to the contrary, and excepting campaign contributions as defined by law, 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, nor knowingly pay for any meal, beverage, or other item to be consumed by such public officer, member of the general assembly, local government official or government employee, whether or not such gift or meal, beverage or other item to be consumed is offered, given or paid for in the course of such lobbyist's business or in connection with a personal or social event; provided, however, that a professional lobbyist shall not be prohibited from offering or giving to a public officer, member of the general assembly, local government official or government employee who is a member of his or her immediate family any such gift, thing of value, meal, beverage or other item.

## IV. Discussion

### Prior Commission Opinions

The Commission has issued several opinions dealing with issues similar to this request. In Advisory Opinion 11-08, the Office of Legislative Legal Services of the Colorado General Assembly submitted a request on behalf of a member of the General Assembly, asking whether the member could accept disbursements from a blind trust to pay for medical and travel expenses related to the legislator's wife's medical condition. Using the "relative or personal friend" exception in section 3(3)(g) of Article XXIX, the Commission determined that it would not be a violation of Article XXIX if the member accepted said disbursements. Drawing from Position Statement 08-01, the Commission laid out the criteria to be used in determining whether an event is a "special occasion":

1. It can be shown under all of the relevant circumstances that it is a family or personal relationship rather than the governmental position that is the controlling factor; and
2. The public official's or employee's receipt of the gift or other thing of value would not result in or create the appearance of:
  - a. Using his or her office for personal benefit;
  - b. Giving preferential treatment to any person or entity;
  - c. Losing independence or impartiality; or
  - d. Accepting gifts or favors for performing official duties.

The Commission specifically noted that the blind trust would be structured so that the member would not know who has given to this fund and in what amount, so that there would be no possibility that donations would be made with the intent to influence the member in the performance of his official duties.

In Advisory Opinion 13-07, an employee of the Colorado Department of Labor and Employment submitted a request asking whether it would be permissible to solicit funds to help defray her adult daughter's medical expenses. A nonprofit had been established as a blind trust to collect funds for this purpose, where only the non-profit's treasurer would have access to the account. Although the Commission noted that the employee's adult child was not a covered individual and, therefore, not subject to the gift ban, the Commission nevertheless provided several suggested guidelines to avoid conflicts of interest and the appearance of impropriety. The guidelines in Advisory Opinion 13-07 relevant to the instant request are: (1) announcements about the fundraising should not endorse the nonprofit; (2) there should be no appearance or suggestion that agency managers encourage or expect participation; (3) employees should not experience any pressure to donate or to donate at a particular level; and (4) names of the donors and the amount donated should not be shared with the requestor.

In Letter Ruling 14-03, the Commission considered the propriety of two Fraternal Order of Police benevolent funds, which 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.” Donations for these funds would be solicited from law enforcement personnel and from the public. The Commission used the “employment incentive” exception of art. XXIX, sec. 3(3)(h), to determine there would be no violation of the gift ban. Specifically, the Commission noted, “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.” As it did in Advisory Opinion 13-07, the Commission expressed certain concerns that are also relevant to the instant request: (1) there should be no threat to reward or punish employees based upon their participation in the fundraising activities; (2) no employee should suffer any pressure to contribute to the benevolent fund; (3) no statement or expression may be made that an official act will be granted or denied because of contributions to the benevolent fund; (4) there should be no public display of sponsorship; and (5) no funds may be solicited or received from lobbyists.

### The Instant Request

As can be seen from the survey of prior Commission opinions, the analytical framework of the instant letter ruling request bears a high degree of similarity to the Commission’s prior decisions. Provided that adequate limitations and safeguards are in place, which are discussed below, the request to hold a fundraising golf tournament and to establish a GoFundMe account for the benefit of the beneficiary would not constitute a violation of Article XXIX.

With respect to the “relative or personal friend” exception of section 3(3)(g), it is clear that the instant request concerns itself with a “special occasion” within the meaning of the exception. The special occasion (the beneficiary’s illness) is governed by the family or personal relationship of the Requester with the beneficiary. The beneficiary’s governmental position is not the controlling factor. There is nothing in the request to indicate that the beneficiary would be using his office for personal benefit, giving preferential treatment to any person, losing his independence and impartiality, or accepting gifts for the performance of his official duties. *See* Position Statement 08-01, Advisory Opinion 11-08. However, these factors could become problematic with fundraising participants other than the family and friends of the beneficiary, such as corporate sponsors, or vendors or contractors of the City of Greeley. The exception contained in section 3(3)(g) applies only to relatives or personal friends of the covered individual. Requester must not solicit or permit commercial business sponsorships of the event, whether as hole sponsors for the golf tournament or otherwise.

To avoid attempts to improperly influence the beneficiary in the performance of his official duties, Requester must take reasonable steps to ensure that the names of donors and the amounts donated are not shared with the beneficiary. Requester has indicated that a blind trust could be cost-prohibitive, and therefore self-defeating under the circumstances. It is not strictly necessary to establish a blind trust, provided Requester takes reasonable steps to implement the precautions above. Requester may establish a bank account, in lieu of a blind trust, provided also that the beneficiary has no control of, or access to, the account.

The Commission also cautions that there should be no pressure placed on any person to participate in the fundraising efforts or donate at a particular level; no appearance or suggestion

that Greeley encourages or expects participation of its officials or employees; and no statement or expression that an official act will be taken because of contributions to the fundraising effort.

As in the case of prior opinions, under section 3(4) of Article XXIX, lobbyists are prohibited from donating to the fundraising efforts, unless they are specifically excepted as a member of the beneficiary's immediate family.

Provided the above criteria and safeguards are met, the manner of soliciting participation in the event is in the discretion of Requester. For example, a GoFundMe page established by Requester that meets the criteria and safeguards listed above and encourages (or, better yet, requires) donors to give anonymously is acceptable. It may be difficult, if not impossible, to satisfy the necessary criteria and safeguards in the case of a posting to the beneficiary's Facebook page. The beneficiary's Facebook page should not be used to promote these events unless all the criteria and safeguards of this letter ruling are met. However, Requester and other non-covered individuals may share the event on their own social media pages, though comments identifying donors and amounts of donations should be discouraged.

## **V. Conclusion**

Under the facts and circumstances of this case, and consistent with the discussion above, it would not constitute a violation of Article XXIX for Requester to implement a fundraising event to defray the beneficiary's health care expenses for the beneficiary's serious medical condition.

The Commission cautions that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission 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**

Elizabeth Espinosa Krupa, *Chair* (not participating)

William Leone, *Vice-Chair*

Selina Baschiera, *Commissioner*

Debra Johnson, *Commissioner*

Yeulin Willett, *Commissioner* (dissenting)

Dated: March 16, 2021

## **Commissioner Willett dissents from the Letter Ruling**

I dissent from the approach taken, both at the Hearing and in this Opinion, in numerous respects, only one of which I will address herein. There should have been more discussion during the Hearing, and relatedly more complete written directives in the Opinion, requiring that the golf tournament and any GoFundMe and/or Facebook posts by anyone (assuming for purposes of argument here that such social media type of fundraisers are ever appropriate for our purposes,

which I am not convinced of) be clearly limited to "relatives and personal friends" per the time honored inescapable Constitutional requirements. Too often the aspirational goal of not putting an elected official in a lesser position than the general public is cited; as long as it remains a mandate from the People that they can only accept gifts (donations) from "relatives or personal friends" in circumstances like this, then by definition they will be somewhat disadvantaged. (I also would not have cited LR 14-03 in the Opinion, as it was decided on wholly different grounds and a separate exception, but would have including other citations and related language more on point.)

Dated: March 16, 2021