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**Dino Ioannides**, *Executive Director*

## **Letter Ruling 21-02**

(Gifts to Third Parties on Behalf of Covered Individuals)

**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 its proposed “Day at the Capitol” event in which Requester will donate cash gifts to third parties, who are not covered individuals, based on legislators’ votes for recipients.

### **I. Background**

Requester is 501(c)(3) nonprofit corporation. It serves as a “women’s training organization that develops civic leaders committed to improving our community.” Requester’s community programs “donate thousands of hours of community service each year...” Requester also “has a proud history of public policy and advocacy...to monitor, advocate, and support various important pieces of legislation at the Colorado State Capitol...”

In past years, Requester has hosted an annual “Day at the Capitol”, in which it hosts a breakfast for legislators, “where [legislators] can mingle with [Requester’s] members facilitated by [Requester’s] contract lobbying firm...and leave behind information to educate legislators on [Requester’s] mission and the bills of concern to the populations [Requester] service[s].”

However, due to the COVID-19 pandemic, Requester seeks to modify its approach for the 2021 Day at the Capitol. Requester has asked the Commission whether its new plan comports with the requirements of Article XXIX.

Requester’s proposed plan for the 2021 Day at the Capitol includes, in summary:

1. Using Requester’s lobbying firm “to more directly educate the legislators” about Requester’s mission, community contributions, community partners and issues of concern, through written and video material sent by email.
2. Legislators will be invited to participate in a “virtual roundtable” with Requester’s members “to discuss bills that have been proposed”.
3. Rather than using available funds to provide breakfast for legislators, Requester would instead donate the funds to Requester’s community partners.
4. Legislators would be offered the opportunity to vote for which community partner

should receive Requester's donations, as follows:

- a. Community partners selected for 2021 include four charitable or community service organizations.
- b. Each legislator's vote for a community partner will increase the donation to that partner by \$5 (roughly the amount normally spent for the food and beverage per individual at the legislative breakfast).
- c. Donations made to community partners will come from Requester, "in honor of the 2021 Colorado Legislature. No funds will go through the legislators and no funds will be collected from legislators."
- d. The maximum total donation will be \$500, and the donation will be made in one sum and "not tied explicitly to any legislator".

## **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 members of the Colorado General Assembly ("legislators"). *See generally* Colo. Const. art. XXIX §§ 1, 3, 4, 5, and 6.

## **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(2) of Article XXIX of the Colorado Constitution provides, in pertinent 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) 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.

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.

Section 24-18-104(1), C.R.S. provides, in pertinent part:

...A public officer, a member of the general assembly, a local government official, or an employee shall not:

- (b) Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:
  - (I) Which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or
  - (II) Which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

Section 24-18-106(1), C.R.S. provides, in pertinent part:

... A member of the general assembly shall not accept a fee, a contingent fee, or any other compensation, except his official compensation provided by statute, for promoting or opposing the passage of legislation.

#### **IV. Discussion**

It is important at the outset to make an important distinction in issuing this letter ruling. For purposes of this letter ruling, the Commission only concerns itself with the immediate request presented. Namely, the Commission will address only the Requester's proposal regarding its modified 2021 Day at the Capitol event. The Commission does not address Requester's typical (*i.e.*, non-COVID related) annual Day at the Capitol involving a legislative breakfast. In that regard, Requester might consider seeking a separate letter ruling for any future legislative breakfast events, and the Commission directs Requester to the language of Section 3(2) and 3(4)

of Article XXIX. Nor does the Commission's approval of this request constitute blanket approval of similar events in the future, outside of the unique circumstances presented by the global COVID-19 pandemic.

As pertaining to Requester's modified 2021 Day at the Capitol proposal, the Commission finds that, if Requester conducts the event as specifically limited in its request, there would be no violation of Article XXIX. The applicable law cited above, in every instance, restricts members of the general assembly from accepting, receiving, or soliciting a gift, including money or any other thing of value over the gift ban amount. The applicable law cited above also prohibits professional lobbyists from offering, giving, or arranging to give any such gift, of any amount. But there is no applicable restriction in Article XXIX or associated statutory provisions that would prohibit the activity contemplated in this request.

This request involves the giving of cash gifts to entities that are not covered individuals under Article XXIX. Importantly, these cash gifts are not being funneled through legislators, and legislators do not pick the community partners. There will be no gifts to legislators. Rather, Requester has made clear that the gifts will flow directly from Requester to its community partners. Gifts to Requester's community partners will not be given in the name of individual legislators. As so restricted, there would be no violation of Article XXIX.

## **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 conduct its proposed 2021 "Day at the Capitol" event as described.

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**

William Leone, *Vice-Chair*  
Selina Baschiera, *Commissioner*  
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Yeulin Willett, *Commissioner*

Dated: March 16, 2021