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Dino Ioannides, *Executive Director*

Letter Ruling 22-01 ¹ (Acceptance of Gifts)

Summary: Under the facts and circumstances of this request, it would not be a violation of Article XXIX for Requestor’s employees to accept gifts in the form of event tickets valued at less than \$65.00, so long as certain parameters are put in place and employees with decision-making authority over the relationship with the donor are not permitted to accept the gifts.

I. Jurisdiction

Requestor is an institute of higher education, created by statute. Requestor’s employees are subject to the IEC’s jurisdiction and the provisions of Article XXIX of the Colorado Constitution pursuant to Section 2(1) of that article.

Any person who is not subject to the IEC’s jurisdiction may submit a request to the IEC 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 considers such requests pursuant to the provisions set forth in IEC Rule 5.

II. Background

Requestor’s campus is located across the street from Ball Arena, in Denver, Colorado. Requestor and Ball Arena do not have any formal business relationship, except that Ball Arena leases a small parcel of land from Requestor for parking, and has done so for several decades.

Based solely on Requestor’s proximity to Ball Arena, Ball Arena has offered to periodically donate unsold, last-minute tickets for Ball Arena events to Requestor’s employees. Requestor believes the impetus for Ball Arena’s offer is reaching a critical mass of audience members in events that may regularly command lower attendance numbers. Requestor, aware of Article XXIX’s restrictions on gifts to state employees, has sought the IEC’s feedback on drafting a policy that would comply with the constitutional gift ban. Requestor refers to its draft policy as the “Ball Arena Ticketing Program.”

¹ This Letter Ruling 22-01 was originally, and incorrectly, designated as Advisory Opinion 22-01.

Requestor's proposed limitations for its policy include: (1) prohibiting senior leadership that have policy, contract, or purchasing authority from participating in the Ball Arena Ticketing Program; (2) limiting all employees from receiving more than \$65 worth of tickets in a single year; and (3) tracking the ticket use of employees participating in the Ball Arena Ticketing Program. The program would be administered by Requestor's Employee Recognition Committee, a group of employee volunteers that plans employee events and awards.

III. Applicable Law

Section 24-18-104, C.R.S., provides that state employees shall not:

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 [or she] knows or which a reasonable person in his [or her] position should know under the circumstances is primarily for the purpose of rewarding him [or her] for official action he [or she] has taken.

Section 3(2) of Article XXIX of the Colorado Constitution provides in relevant part:

No ... government employee... shall solicit, accept or receive any gift or other thing of value having ... a fair market value... greater than [\$65.00]² in any calendar year... including but not limited to... entertainment..."

IV. Discussion

With the parameters contemplated by Requestor for its Ball Arena Ticketing Program, that program would not violate either the statutory or constitutional gift prohibitions. Requestor should ensure that no individual with decision-making authority as it relates to Ball Arena participates in the program. Respondent should also clearly communicate to its employees that they may only accept tickets up to the \$65.00 limit per calendar year. Finally, the value of the tickets should be assessed at the price those tickets are offered to members of the public. *See* Letter Ruling 12-01.

In Advisory Opinion 14-01, the IEC considered whether the Arapahoe County Clerk and Recorder's Office could accept a holiday gift box from the Denver Broncos containing multiple items, some of which were valued over the gift ban limit (\$53.00 at that time), and disperse the items to employees via office lottery. The IEC determined that the gift box would violate the gift ban, even if disbursed among employees. A deciding factor in that case was the Clerk and Recorder's Office had a "back door" policy for Broncos players, allowing them to renew vehicle registrations and driver's licenses in a private area of the office. The IEC viewed the gift as a reward for official action taken in violation of § 24-18-104, C.R.S.—*i.e.*, special treatment of

² The gift ban limit is periodically adjusted for inflation and is currently set at \$65.00. *See* Position Statement 19-01.

Broncos players who had business with the Clerk and Recorder's Office.

The same concerns are not present here. The Ball Arena Ticketing Program will have specific safeguards in place to ensure that individuals with decision-making authority are *not* permitted to accept free tickets from Ball Arena. The value of each of these tickets may not exceed the \$65.00 threshold. And Requestor has specifically represented that it provides no goods or services to Ball Arena. The lease between Ball Arena and Requestor for a parcel of land appears to be a longstanding, arms-length transaction for which Ball Arena pays Requestor market-rate consideration.³ Unlike the situation in Advisory Opinion 14-01, it appears that the motivating factor behind Ball Arena's offer of excess tickets is Requestor's close proximity to Ball Arena, not a *quid pro quo* arrangement.

Finally, while IEC decisions are not precedential, the IEC strives to address inconsistencies in prior opinions. Therefore, to the extent necessary, the IEC expressly overrules that portion of Advisory Opinion 14-01 that considers the value of a gift to be the sum total of gifts to a specific agency's employees. *See* Advisory Opinion 14-01 at 4-5. That approach would disadvantage employees of large agencies or departments. There have also been opinions that have considered valuation based on the per-employee amount. *See, e.g.,* Letter Ruling 12-01. The IEC believes that valuing the gift on a per-employee basis is more consistent with the language of Article XXIX, which is focused on the amount of gift received by a covered individual, not by an agency. *See* Colo. Const. art. XXIX § 3(2).

V. Conclusion

Under the facts and circumstances of this request, it would not be a violation of Article XXIX or the statutory standards of conduct for Requestor to establish, and Requestor's employees to participate in, the Ball Arena Ticketing Program as that program was described by Requestor.

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

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Dated: March 18, 2022

³ Again, however, any individual with decision-making authority regarding the lease with Ball Arena should not participate in the Ball Arena Ticketing Program.