

State of Colorado



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Letter Ruling 22-03 (Conflict of Interest)

Summary: Under the facts and circumstances of this request, it would not be a violation of Article XXIX or § 24-18-104, C.R.S., for a sheriff’s deputy to accept skiing lift tickets or a season pass in return for providing off-duty law enforcement services to the ski resort.

I. Background

The La Plata County Sheriff’s Office and Purgatory Ski Resort (jointly, “Requestors”) filed this request for a letter ruling. The request seeks the determination of the Independent Ethics Commission (“Commission” or “IEC”) about whether Requestors’ “Skiing Sheriff” Program (the “Program”) complies with the requirements of Colorado’s ethics laws. The Program, which was suspended after the 2018/2019 ski season, facilitated the provisioning of volunteer law enforcement services to the Resort by granting free lift tickets to uniformed La Plata County sheriff’s deputies. In exchange for the lift tickets, the deputies would be on call at the resort for set hours, during which they agreed to respond to calls for law enforcement assistance. Requestors now wish to reinstitute the Program and seeks confirmation that the Program is structured lawfully under Colo. Const. art. XXIX.

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 Requestors are not public officers, members of the general assembly, local government officials, or government employees, and are authorized to submit this request for a letter ruling pursuant to § 24-18.5-101, C.R.S.

"Government employee" means any employee, including independent contractors, of the state executive branch, the state legislative branch, a state agency, a public institution of higher education, or any local government, except a member of the general assembly or a public officer. § 2(1) of Colo. Const. art. XXIX. La Plata County sheriff’s deputies are government employees subject to the Commission’s jurisdiction.

III. Applicable Law

A. Constitutional provision

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) [currently set to \$65] 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. § 3(2) of Colo. Const. art. XXIX.

B. Statutory provision

Section 24-18-104, C.R.S., provides as follows, in pertinent part:

(1) 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.

* * *

(3) The following are not gifts of substantial value or gifts of substantial economic benefit tantamount to gifts of substantial value for purposes of this section:

* * *

(j) Any other gift or thing of value a public officer, member of the general assembly, local government official, or employee is permitted to solicit, accept, or receive in accordance with the provisions of section 3 of article XXIX of the state constitution, the acceptance of which is not otherwise prohibited by law.

IV. Discussion

Requestors indicate that La Plata County has 56,000 residents and covers 1,700 square miles. The Resort is situated at the northernmost part of the county and is relatively far from the county's municipal population centers, and, consequently, from law enforcement assistance. During the winter season (mid-November to mid-April), the Resort hosts an average of 280,000 to 300,000 skiers and snowboarders, or an average of 2,000 to 2,800 guests per day. On weekends and during holidays, the average climbs to between 3,000 and 6,000

skiers/snowboarders per day, not including non-skiers. Requestors report that the Resort can have, during certain times in the winter, the largest concentration of people in the county. The nearest sheriff's office is in Durango, a 30-minute drive. Requestors believe this distance from law enforcement assistance may place Resort guests at risk in adverse circumstances.

The La Plata County Sheriff's Office typically deploys five to seven patrolling deputies at any given time. The Sheriff's Office states that it does not have the resources to commit deputies solely to the resort.

In the past, the Program has facilitated the ability to have as many as six deputies at the Resort on busy ski days, each of whom provides a law enforcement presence and is ready to respond to calls for service, without redirecting law enforcement resources from other areas of the county or using taxpayer funds to provide on-duty officers. The deputies serving the Resort were required to be in uniform and to carry a radio and firearm, though they were on off-duty status. This arrangement was similar to other private-party engagements that hire off-duty law enforcement for private events. Requestors believe that the Program, which allowed for quick response times to incidents requiring law enforcement presence, was beneficial to the Resort, the County, and the public.

If the Program is reinstated, deputies would again be granted complimentary ski privileges for the day in return for their service at the Resort. The Program would be operated on a voluntary basis. Requestors state that the value provided to the Resort and to the public under the Program "far exceeds the value granted to the individual deputies, who volunteer their personal time." The Sheriff's Office "events" labor rate for off-duty deputies is \$70 per hour. Of that amount, the deputy receives \$60 per hour and the county receives \$10 per hour to cover vehicle use and benefits.

Current technology allows the Resort to implement a system that imposes specific limits on Resort privileges, such as the use of photo ID cards that are reloadable on a per day basis. The Resort indicates it has "nearly limitless ways to control and audit [lift access] usage."

The constitutional and statutory gift ban restrictions specified above are both inapplicable under the circumstances described by Requestors. Section 3(2) of Colo. Const. art. XXIX specifically allows a covered individual (in this case, the deputies) to accept or receive a gift or thing of value if lawful consideration of equal or greater value has been provided in return by the covered individual. Likewise, the applicable statutory gift ban makes an exception for a gift or thing of value that is permitted "in accordance with the provisions" of § 3 of Colo. Const. art. XXIX, provided the acceptance of the gift or thing of value is not otherwise prohibited by law.

In this case, it appears that Requestors have and will continue to structure the Program such that the participating deputies will provide lawful consideration of equal or greater value for the complimentary lift ticket to the Resort in the form of off-duty law enforcement services. So long as this arrangement is maintained in the future, and the value of the consideration provided by the deputies to the Resort equals or exceeds the value of the lift ticket or season pass received by the deputies from the Resort, there is no violation of Article XXIX or the statutory standards of conduct in Article 18 of Title 24, C.R.S.

The Commission's conclusion that there is no violation is based on the following assumptions: Because the price of daily lift tickets and season passes fluctuates based on demand, timing, and other factors, Requestors will ensure the following: (1) if a law enforcement officer is provided a daily lift ticket, that the value provided by the law enforcement officer to the Resort is equal to or greater than the retail price of a daily lift ticket on the date of access; or (2) if a law enforcement officer is provided a season pass, Requestors will track season pass usage and ensure that a law enforcement officer who is issued a season pass provides services of equal or greater value to the Resort over the course of a season. Requestors will value a season pass for a law enforcement officer using the same retail price that a member of the public would pay for that season pass on the day the season pass is issued to the law enforcement officer. *See* Letter Ruling 12-01; Advisory Opinion 10-14. A law enforcement officer who does not provide services of equal or greater value to the Resort in exchange for that officer's lift ticket or season pass is responsible for reimbursing the Resort the difference. Lastly, Requestors should annually provide a copy of this Letter Ruling 22-03 to all law enforcement officers participating in the Program to ensure officers are aware of their obligations under the state's ethics laws.

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 sheriff's deputies to receive lift tickets or season passes in exchange for their off-duty law enforcement services to a ski resort, as specifically explained above.

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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Cole Wist, *Vice-Chair*

Elizabeth Espinosa Krupa, *Commissioner* (not participating)

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Dated: August 9, 2022