

State of Colorado



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POSITION STATEMENT 08-03 (Special Discounts)

I. Introduction

The Colorado Constitution authorizes the Independent Ethics Commission (“IEC” or “Commission”) to give advice and guidance on ethics issues arising under Article XXIX of the Colorado Constitution and any other standards of conduct and reporting requirements as provided by law. The IEC issues this Position Statement for the purpose of further clarifying the provisions of Section 3 of Article XXIX of the Colorado Constitution (“Section 3”). In this Position Statement, the Commission responds to the uncertainty surrounding Section 3 (2), relating to special discounts. It is the Commission’s hope that this Position Statement will increase the awareness of public officials and employees and the public at large. The Commission encourages public employees and officials to request further clarification if needed, through a request for advisory opinion.

II. Guiding Principles

The Commission reaffirms its Guiding Principles as set forth in Position Statement 08-01 (Gifts). The Commission continues to follow applicable constitutional guidelines, and to interpret Colorado Constitution Article XXIX in a manner that preserves what it believes was the intent of the electorate – “to improve and promote honesty and integrity in government and to assure the public that those in government

are held to standards that place the public interest above their private interests.” The Commission also references Section 6, which provides that those who breach the public trust for private gain or induce such breach shall be liable for monetary penalties.

III. Applicable Law and Precedent

Section 3 of Article XXIX reads in relevant part:

(2) 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.

In Position Statement 08-01 (Gifts), in the Commission’s discussion of the acceptance of prizes, raffles, lotteries, and silent auctions, the Commission stated its belief that “government officials and employees should not be prohibited from accepting offers and benefits given to the general public or a class of people under circumstances where others receive the same opportunity.”

IV. Discussion

Under Article XXIX (3), a “special discount” is to be considered a prohibited “thing of value” if its fair market value or aggregate actual cost is greater than \$50, and if there is no lawful consideration of equal or greater value given in return. The term “special discounts” is not defined in Article XXIX. The Commission believes that a “special discount” refers to a discount that is specifically targeted at a particular government employee or official, or a small group of government employees or officials, where there

is a potential to influence government action. This type of discount would, in the Commission's opinion, be an impermissible violation of the public trust.

The Commission, however, does not believe that the voters intended to bar commercial discounts that are made available to a broad group of individuals, where there is no realistic possibility that the offeror is seeking to influence an official act or decision or to reward a government official or employee for any official action.

Under this analysis, the IEC believes that government employees and officials may generally accept certain opportunities and benefits that are available to the general public or to all government employees and officials, or to a subset of employees and officials, so long as the opportunity is uniformly offered and the group is large enough that it is unlikely that the discount would in any way influence the recipients in the performance of their official duties. These benefits may include reduced rates for government employees at hotels, telephone service, or other commercial consumer discounts. They may also include general discounts that are available to the public, such as coupons accessible on the Internet, AAA discounts and other similar consumer discounts.

The Commission, however, also recognizes that the size of the group may be irrelevant in some situations; *e.g.*, as in the case of a county contract procurement officer who participates in a group discount from Vendor A and who has influence over whether Vendor A is awarded a contract by the county. In such situations, individuals are strongly encouraged to seek advice from the Commission through a request for advisory opinion.

This, as all Position Statements, is intended to give broad advice to government officials and employees and the public. The Commission encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinion and letter ruling.

The Independent Ethics Commission

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