

State of Colorado



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Position Statement No. 09-04 (Definition of “person”)

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 clarifying the provisions of Section 2(4) of Article XXIX of the Colorado Constitution (“Section 2(4)”), relating to the definition of “person.” The Commission has received several inquiries relating to whether a governmental agency or an institution of higher learning is a person under Article XXIX. 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

Section 3 of Article XXIX reads in relevant part:

(1) 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. (emphasis added)

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

(f) Reasonable expenses paid by a nonprofit organization or other state or local government for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local government, provided that the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities.

Section 2(4) of Article XXIX defines the term “person” as:

any individual, corporation, business, trust, estate, trust, limited liability company, partnership, labor organization, association, political party, committee, or other legal entity.

IV. Discussion

A. Legislative History

The definition of “person” contained in Article XXIX, Section 2(4) is similar to the definition of “person” that is contained in §2-4-401(8), C.R.S. which applies “to every (Colorado) statute, unless the context otherwise requires.” Section 2-4-401(8),

however, also includes “government or governmental subdivision or agency “in its definition of “person”, and does not include “labor organization, (or)... political party, committee” which are included in the definition contained in Article XXIX.

The Commission reviewed the legislative history of Article XXIX in order to try to discern the intent of the drafters. The Commission notes that the original draft of the amendment submitted to the Office of Legislative Legal Services did not contain a definition of “person” and the drafters were asked by Cathy Eslinger, of the Office of Legislative Council, what the proponents meant by “person”. Martha Tierney, an attorney appearing on behalf of the proponents, answered that “we do intend that ...the term ‘person’ mean the broad term as defined in 2-4-401(8). And so we will make that clearer.” *Proposed Initiative Measure 2005-2006 #118, Concerning Ethics in Government Transcript of May 4, 2006 Review and Comment Hearing pp. 17-18.* The result was the definition which is contained in the final measure as passed by the voters. There is no other discussion of this issue at the Review and Comment Hearing, the Title Board Hearing or in the Blue Book. A review of this section of Article XXIX therefore leads to the preliminary conclusion that governments and governmental agencies are intentionally excluded from the definition of “persons” under Article XXIX.

B. Exception “f” reference

Article Section 3(3)(f), however, specifically excludes from the gift ban “reasonable expenses paid by a non-profit organization or other **state or local government** for attendance at a convention, fact finding mission or trip...” (emphasis added). If state or local governments were excluded from the definition of “person”, then this phrase would be unnecessary, since any expenses paid by a state or local

government would be outside of the provisions of the gift ban as the gift would not be from a “person”. This provision of Article XXIX therefore appears to support the idea that state and local governments are “persons.”

C. “Other Legal Entity”

The definition of “person” in both Article XXIX Section 2(4) and C.R.S. § 2-4-401(8) includes the phrase “other legal entity.” The Commission finds that that term is broad enough to include a government agency or governmental subdivision or a public entity such as an institution of higher education.¹ Therefore public employees and officials may not accept gifts valued in excess of \$50 from any legal governmental agency unless the gift falls under a specific exception.

V. Conclusion

The Independent Ethics Commission holds that a government agency is a person within the meaning of Article XXIX of the Colorado Constitution. A public official or employee therefore may not accept gifts valued in excess of \$50 from governmental agencies or institutions, unless the gifts falls under another specified exception.

The Independent Ethics Commission

Matt Smith, Chairperson
Roy V. Wood, Vice Chairperson
Dan Grossman, Commissioner
Sally H. Hopper, Commissioner
Larry R. Lasha, Commissioner

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¹ Employees of institutions of higher education are specifically covered under the definition of “government employees.” The Commission therefore holds that these institutions themselves are considered part of government for purposes of Article XXIX.