

On March 10, 2014, the Colorado Independent Ethics Commission hired Acclaim Investigations LLC to examine the circumstances surrounding Complaint 13-11, filed by Compass Colorado Sept. 30, 2013 against Colorado Gov. John Hickenlooper. Specifically, Commissioner William J Leone charged Acclaim with the task of “finding out what happened” at the Democratic Governors Association (DGA) Conference in Aspen on July 12-14, 2013.

In filings with the commission prior to Acclaim being hired, Hickenlooper admitted to have accepted a free room at the Ritz-Carlton Club in return for hosting the conference. The governor argued accepting this gift doesn’t violate the state’s constitution because his hosting activities constituted “lawful consideration of equal or greater value” than the gift he received.

In his instructions to Acclaim, Leone specified that our firm not spend more than 40 hours on the investigation and engage in no out of town travel. He also declined to use the commission’s subpoena powers. Acclaim therefore chose nine key individuals to interview. In addition, we reached out to the DGA, which provided us with a letter answering some of our questions. In all of our efforts, we were greatly assisted by the governor’s office.

Our investigation focused on the governor’s defense. We interviewed five members of Hickenlooper’s staff, two members of his campaign organization and one political “insider” who attended the conference. We also interviewed the governor.

Here are the primary issues we identified:

- In a “Statement of Facts” signed by two members of the governor’s legal team – David Spector and Jack Finlaw - on Feb. 21, 2014, the governor’s office stipulated that “One or more staff accompanied the governor at all times at the conference.” Our investigation indicates that statement probably isn’t true. At a closed door dinner at the Little Nell Restaurant in Aspen Saturday July 13, 2013, attended by

16-20 people, Hickenlooper was alone with an assortment of high-powered executives focused on energy policy. Campaign Finance Director Laura Warren said she was at the event for the governor's opening remarks, but left shortly thereafter. Chief of staff Roxane White was invited to the dinner but said she didn't attend because the event was slated "way past my bed time." The governor said he used the time to discuss state energy policy and to try – unsuccessfully as it turned out – to convince BP to support his initiative to adopt tougher air rules. In addition to BP chief executive John Minge, also present at the dinner were Govs. Inslee of Washington, Shumlin of Vermont and Chaffee of Rhode Island; Jed Bhuda, a natural gas lobbyist; Jim Carpenter of Stratton-Carpenter and Associates, a Denver public affairs company; Colm O'Comartun, executive director of the DGA; Ted Brown of Noble Energy; Michael Stratton of Stratton-Carpenter; Jim Campbell of Century Link; Hollie Velasquez Horvath, Xcel Energy; Julia Levy, BP America; Dan Pfeiffer, Xcel Energy, lobbyist; Pam Roth, WPX Energy, government affairs and Christopher Sherman, NextEra Energy Resources. Spector, who released the list of names, said it couldn't be stated as a fact that all of the above named people actually attended – with the exception of the governor – only that they had been invited. A letter from DGA said there may have been unnamed others at the dinner. Spector said he has filed an amendment to the Statement of Facts to reflect the absence of staff.

- It wasn't only the governor who accepted free hotel and fees from the DGA. His staff was granted similar privileges. According to a

letter from the Democratic Governors Association (DGA), in addition to the cost of the governor's room (\$1,778.58); the association paid chief of staff Roxane White's room cost \$1,066.26; Alan Salazar's room cost \$1,066.26 and campaign finance director Laura Warren's room cost \$927. In order to be invited to the conference, a sponsor had to contribute at least \$10,000. The governor and his staffers were relieved of that obligation as well. Spector said he checked with DGA on this, and was told it's customary for the organization to waive staff fees.

- One could question with the notion that the governor returned “lawful consideration of equal or greater value” to the DGA on three fronts:
 - The governor said he attended every forum, a statement this investigation did not attempt to substantiate. In his interview, however, he said his participation in planning was limited to one meeting to discuss forums and speakers. Thus, all planning was limited to the work done by Warren, and the governor's executive staffers, who put in slightly over seven hours. Involved in this equation is a mixture of campaign money and public money, making the notion of whether the governor's contribution actually “dwarfed” the hotel and food bill much more difficult to determine. The governor's salary can't be considered in the equation because he says he donates it to charity. Ms. Warren's salary doesn't come from the public treasury. So we're left with the seven plus hours worked by Simon Tafoya, Valerie Beck, Lisa

Carpenter, Henry Sobanet, Mary Ellen Smith and Simon Tafoya. Did the monies for their combined salaries over 7 hours and ten minutes equal the \$3,911 in hotel costs sustained by the governor and his staff plus hundreds of dollars more in food and drink? We suggest that it's a question worth considering.

- When the governor, and two of his fellow chief executives, were left alone with the nation's top energy executives, one might argue the DGA achieved its goal in paying the governor's bills. The DGA received a total of \$840,000 for the three-day event. The governor says all the executives at the Little Nell got for their money was bad news; in fact seven months later Hickenlooper pushed through tight air pollution standards on the oil and gas drilling industry. Nonetheless, he said he was vastly entertained at the dinner by a first-hand account from a BP executive of the minute-by-minute drama behind the explosion of BP's Deepwater Horizon well in the Gulf of Mexico. In our interview, he admitted BP took full advantage of its relationship building opportunity. "They'd be fools if they didn't," he said. So, did the DGA get its money's worth? It's a question for the commission to decide.
- In response to interrogatories posed by counsel for Compass Colorado, Hickenlooper said part of the consideration he offered in return for his room and board was "I...helped the DGA raise funds that it uses to put on these types of policy

conferences...” During his interview with Acclaim, however, the governor said apart from occasionally asking a lapsed member to renew, he has done no fund raising for DGA. “Not to say I couldn’t have teased someone about it, or made some, you know, comment, but there was no formal fundraising for the DGA,” he said.

In Aspen that weekend of July 12-14, the DGA conference was hardly the sole event in town. The Aspen Institute had a non-political forum the governor apparently attended briefly, and on Friday night there was a Colorado Democratic Party Fund Raiser which the governor also attended, according to Ms. Warren. On Saturday afternoon, the governor said he attended a Hickenlooper For Colorado fundraiser at the home of an old friend, a fact attested to by Ms. White. However, all involved with both fund raisers said they were totally separate from the DGA affair, and Acclaim found no evidence to contradict those assertions.

In addition, Chief Strategy Officer Alan Salazar said the governor attended his own little conference of telecommunications executives some time during the weekend, but that too was apparently apolitical and totally separate from the DGA program.

Some of those interviewed by Acclaim objected to the insinuation that there was an element of “Pay to Play” in the DGA conference. The policy element, many said, was of considerable interest.

Jack Feeley, Department Chairman for Governmental Relations at Brownstein Hyatt Farber Schreck, LLP, who represented two firms attending the convention, Federal Express and SAS, said he thought the programs were “really very good.”

Feeley said his client, SAS, was very interested in the program on technology in state government and that he sat through the program on oil and gas even though he has no direct interest in it.

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Despite the highbrow content, however, Feeley acknowledged the conference was “generally, a fund raising effort.”

None of the fund raising, it appears, will benefit Hickenlooper. The DGA didn’t donate to the governor’s 2010 campaign and may not contribute to his 2014 campaign.

According to two lawyers consulted by Acclaim, this is because state law doesn’t allow contributions – either in-kind or cash – from corporations, even non-profit corporations like DGA. This opinion was put forward by Chantell Taylor, an attorney with Hogan Lovells and confirmed by Spector. The DGA might be able to produce advertising on Hickenlooper’s behalf, but it’s considered unlikely that DGA would spend the money for that unless it’s a close race. (DAVID IS THIS LAST SENTENCE LEGALLY CORRECT?)