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Advisory Opinion 14-05

(Acceptance of Travel Expenses Paid By a Third Party)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for the Senior Director of Enforcement for the Department of Revenue, or a qualified designee, to accept travel expenses paid for by a nonprofit organization under the circumstances described in this request.

I. BACKGROUND

The Colorado Department of Revenue (“DOR”) has submitted a request to the Independent Ethics Commission (“the Commission”) asking whether Ron Kammerzell¹, Senior Director of Enforcement for the Department of Revenue, (“Requestor”) may accept payment of travel and other expenses in excess of \$53 to speak at a conference in Squaw Valley, California. The Requestor has been asked to speak as part of a main panel at the Rural County Representatives of California (“RCRC”) annual conference. He will speak about Colorado’s experience legalizing marijuana, with an emphasis on how counties are crafting and responding to legislation. RCRC is a non-profit organization which receives less than 5% of its funding from for-profit entities.

II. JURISDICTION

The IEC finds that the Deputy Senior Director of Enforcement for the Colorado Department of Revenue is a government employee and subject to the jurisdiction of the

¹ Mr. Kammerzell has waived confidentiality relating to this request.

Commission. See CO Const. Art. XXIX, sec. 2(1) and sec. 3.

III. APPLICABLE LAW

Section 3 of Article XXIX (Gift ban) 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)[now \$53] in any calendar year, including but not limited to, gifts, loans, 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.

IV. DISCUSSION

Before evaluating the propriety of payment of travel expenses to covered individuals, the Commission first distinguishes between a gift to an individual and a gift to a governmental entity. In Position Statement 12-01, the Commission ruled that the gift ban does not apply if the gift is to a governmental agency. Page 5. The initial question is "whether a public benefit is conferred to a governmental entity as distinct from an individual benefit conferred to the covered individual." Id. The Commission also set forth several factors to consider in determining if a gift is to a covered individual or to a governmental entity:

1. Is the gift to a specific individual or to the designee of an agency?
2. Is the offer made *ex officio*?
3. Is the travel related to the public duties of the traveler?
4. Is there a potential conflict of interest or appearance of impropriety in acceptance of this gift?
5. Is the purpose of the trip primarily educational?

In evaluating this request, the Commission believes that the gift here is to a

governmental agency, not to a covered individual, and therefore the gift ban does not apply. In his official capacity as the Deputy Senior Director of Enforcement for the Department of Revenue, the Requestor is representing the State of Colorado. The benefits of his participation for the DOR and the State include the exchange of ideas about marijuana's evolving legality and receiving updates concerning the impact of legalization on state and local government.

The five factors set out by the Commission also support the gift of travel as being to the DOR and the State and not to the Requestor as an individual. First, the invitation was sent to Mr. Lewis Koski, the Director of the Marijuana Enforcement Division at the Department of Revenue and the Department decided to send Mr. Ron Kammerzell instead. Any number of senior management from the DOR could have accepted the invitation because it relates directly to the DOR's roll-out of marijuana legalization in Colorado. Second, the offer was made *ex officio*; the invitation to speak relates directly to the Requestor's official position as Deputy Senior Director of Enforcement. Third, the topic of his panel at the conference, Colorado's legalization of marijuana and its impact on counties, relates to the Requestor's public duties as a senior enforcement director. Fourth, there does not appear to be a conflict of interest in accepting the gift because the Deputy Senior Director of Enforcement for the DOR is not in a position to take direct official action with respect to RCRC and no evidence demonstrates that RCRC may be attempting to curry some favor by inviting the Requestor to the event. Fifth, the conference is educational, allowing different counties to learn about designing and responding to legislation as well as measuring the impacts of legalizing marijuana and other enforcement issues.

Because the gift here inures to the benefit of the DOR and Colorado, and not to the benefit of Mr. Kammerzell as a covered individual, the gift ban does not apply. The Requestor can accept payment for travel and other expenses related to attendance at the RCRC conference.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for the Deputy Senior Director of Enforcement of the Colorado Department of Revenue, or a qualified designee, to accept payment for travel, accommodations, conference fees and other expenses under the circumstances of this request. The Commission cautions public officials and employees that this opinion is based on the specific facts presented in this request, and that different facts could produce a different result. The IEC therefore encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings.

The Independent Ethics Commission

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Dated: June 9, 2014