

Independent Ethics Commission
1300 Broadway, 12th Floor
Denver, Colorado 80203

January 22, 2013

Via email jane.feldman@state.co.us

RE: REQUEST FOR AN ADVISORY OPINION REGARDING TRAVEL
REIMBURSEMENT

Dear Commissioners,

On behalf of the Colorado Department of State, I respectfully request an advisory opinion in accordance with Article XXIX, section 5 (5) of the Colorado Constitution, section 24-18.5-101 (4) (b), C.R.S., and Rule 5 of the Independent Ethics Commission (“IEC”). This request regards expenses for travel and educational seminars anticipated by covered members of the Department.

Facts

1. The Department of State oversees election administration in the State of Colorado.
2. Because the Department oversees elections, the Department’s stakeholders include political parties and other partisan and non-partisan groups interested in the election process.
3. Covered employees in the Department are commonly asked to participate in events sponsored by political parties and other partisan and non-partisan groups.
4. To further professional development, the Department has a long-standing policy of reimbursing employees for training, including relevant continuing legal education (CLE) for Department attorneys.
5. Covered employees within the Department have asked to attend events sponsored by the National Association of Secretaries of State (NASS), National Association of State Election Directors (NASED), and Elections Center training.
6. Covered employees within the Department have asked to attend CLE’s relevant to election law, legal writing, legal drafting, and government ethics.
7. Covered employees within the Department have asked to attend CLEs and other election-administration-related events sponsored by various political parties and other partisan and non-partisan groups interested in the election process. Examples include events sponsored by groups such as (a) the American Constitution Society (ACS); (b) The

Federalist Society; (c) Common Cause; (d) Republican National Lawyers Association (RNLA); (e) League of Women Voters; (f) Colorado Democratic Party; (g) Republican Party of Colorado; and (h) various local political parties.

8. The Department has not yet provided funding for the costs associated with these activities and seeks an advisory opinion regarding the payment of direct and indirect costs described in paragraphs 5, 6, and 7.
9. As Deputy, I seek guidance as to whether I can participate in events and approve funding for the Department employees who participate in such events described in paragraphs 5, 6, and 7.

Previous IEC Interpretations

In Position Statement 12-01, the IEC stated “if the travel is paid for by local government or by the state of Colorado, (or another state), travel is permissible.”

This position is consistent with the conflict of interest principles and definitions established by the General Assembly after the passage of Amendment 41.¹ It is further consistent with the position of the Colorado Attorney General:

When article XXIX [Amendment 41] is read as a whole and the provisions harmonized, it requires a nexus between the gifts or activities and the covered persons’ public responsibilities. That is, the amendment limits or prohibits only those gift and activities that would cause the covered official to breach the public trust for private gain.²

Despite these established principles, the IEC has asserted jurisdiction over much broader conduct, under Amendment 41’s “other standards of conduct.”

The IEC has not defined these standards, nor has it provided guidance as to its definition of the terms “partisan” and “political.” The IEC has not clarified whether participation by a covered official in activities sponsored by political or partisan organizations (1) falls within the IEC’s jurisdiction; and (2) if so, whether such political or partisan activity is a violation of Amendment 41.

Because the conferences and trainings are election-related and, therefore, could be (mis)construed as political or partisan, the Department seeks this advisory opinion to clarify whether covered employees can participate in activities described in paragraphs 5, 6, and 7. Moreover, the Department seeks clarification as to whether, as the Deputy Secretary of State, I

¹ C.R.S. 24-18.5-105(1).

² Governor’s Brief in Opposition to Plaintiffs’ Motion for Preliminary Injunction, *Developmental Pathways v. Ritter*, Case No. 07CV1353, 2007 WL 5794312 (Denver District Court, filed April 26, 2007).

can participate in these activities or approve funding for the Department employees who attend such activities.

Respectfully submitted,

Suzanne Staiert
Colorado Deputy Secretary of State