

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

February 15, 2013

Via email jane.feldman@state.co.us

RE: REQUEST FOR AN ADVISORY OPINION REGARDING 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 related expenses incurred by me in the performance of my duties as Deputy Secretary of State

Facts

1. The Department of State oversees election administration in the State of Colorado.
2. During the 2012 election I traveled to various locations in the State on election related activities.
3. Because of the uncertainty of the IEC’s position on the ethics of such activities I have not sought reimbursement.
4. On June 8, 2012, I attended the Logic and Accuracy testing in Saguache County. Political parties and watchers were in attendance. While in Saguache I had lunch with an unaffiliated candidate for County Commissioner. At the lunch we discussed concerns she had regarding the voting equipment being used in Saguache County. I contributed \$20 cash to the lunch and because of the time constraints I left the lunch early and I do not have a receipt. Is it ethical to request reimbursement of the meal without a receipt?
5. On June 26, 2012, I went to Douglas County to observe the ballot tabulation of the Primary Election. The purpose of the trip was to observe and interact with election judges and county staff. Election judges are recommended by political parties and appointed by an elected Clerk and Recorder. Is it ethical to request mileage reimbursement for this purpose?
6. On July 2, 2012, I attended a Boulder County Canvass Board meeting. The Canvass Board consisted of the elected County Clerk and Recorder, two members of the Republican Party, two members of the American Constitution Party and two members of the Democrat Party. Is it ethical to request mileage reimbursement for this purpose?
7. On July 25 and 26, 2012, I attended a recount in Douglas County. The recount was conducted by the canvass board appointed by the political parties. While in Douglas County I had numerous meetings and conversations with the elected County Clerk, the Elections Director and watchers of various political candidates. Is it ethical to request mileage reimbursement for this purpose?

8. On August 3, 2012, I attended the summer County Clerk's conference. I had breakfast with the Denver County Clerk and Recorder. I paid \$5.00 for the breakfast, but did not request a receipt. While there I gave a presentation on the Department of State's status in negotiations with Homeland Security. Is it ethical to request mileage reimbursement for this purpose? Is it ethical to request reimbursement of the cost of the meal without a receipt?
9. On October 19, 2012, I went to Boulder County to attend a Continuing Legal Education (CLE). The CLE was accredited by the Colorado Supreme Court. The information on the CLE is attached. Is it ethical to request reimbursement for costs associated with the CLE including mileage and parking?
10. On October 21, 2012, I attended a logic and accuracy testing in Arapahoe County. Both political parties had representatives at the testing. Is it ethical to request mileage reimbursement for this purpose?
11. On October 24, 2012, I attended a test of the tabulation equipment in Arapahoe County. Both political parties had representatives at the testing. Is it ethical to request mileage reimbursement for this purpose?
12. On October 29, 2012, I went to Boulder County as a witness in a lawsuit between Boulder County and the Independence Institute. While in Boulder, I had coffee with a citizen of Boulder active in election integrity issues. I am unaware of his party affiliation. Is it ethical to request mileage reimbursement of mileage for this purpose?
13. On October 30, 2012, I went to Pueblo and met with the Democrat elected Clerk and Recorder and the Secretary of State election observer. While in Pueblo I had lunch with the Pueblo County Republican Chair and a former Democrat State House member. Is it ethical to request mileage reimbursement for this purpose? Is it ethical to request reimbursement of the cost of the lunch?
14. On November 1, 2012, I went to Boulder County and discussed canvass board and watcher issues with a number of Boulder citizens of various political affiliations. While in Boulder I also had coffee with the Chair of the Boulder County Republican party. Is it ethical to request mileage reimbursement for this purpose? Is it ethical to request reimbursement of the cost of the coffee?
15. On November 5th, 2012 I went to Larimer County with a representative from the Attorney General's office regarding litigation brought by the Democratic Party against Larimer County. Our purpose was to offer testimony on behalf of Larimer County regarding a Colorado Open Records request. Is it ethical to request mileage reimbursement for this purpose?
16. On November 29, 2012, I went to Douglas County District Court as an intervening party in a lawsuit between Douglas County and Citizen Center, an election integrity group. Is it ethical to request mileage reimbursement for this purpose?
17. On February 12, 2013, I renewed my Colorado Attorney Registration. Although my position does not require that I am a licensed attorney, many of my job duties overlap with my legal background. As the Deputy I oversee litigation, conduct rule-making hearings, Help America Vote Act (HAVA) hearings, issue declaratory orders and chair the Title Setting Board. Much of my professional development is through bar association CLE's and activities. It is the long standing practice of the Department of State to reimburse employees for attorney registration dues. Is it ethical to request reimbursement of \$225 for Attorney Registration fees?

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” and “reporting requirements.” The IEC has not defined “other standards of conduct” or “reporting requirements”.

In supporting the Secretary’ request for a legal defense fund, the Colorado Attorney General reaffirmed the same position he took with the Denver District Court nearly six years ago: that the Commission’s jurisdiction under Amendment 41 (Article XXIX) is limited to influence peddling, as defined by C.R.S. § 24-18.5-101(5).

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 travel described was election-related and, therefore, could be (mis)construed as political or partisan, I seek an advisory opinion to clarify whether I can obtain mileage reimbursement for these activities.

I further seek an advisory opinion clearly defining the “other standards of conduct” and “reporting requirements”.

Respectfully submitted,
Suzanne Staiert
Colorado Deputy Secretary of State

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).

