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Advisory Opinion 14-03

(Acceptance of Travel Expenses Paid a Third Party)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for the Executive Director of the Department of Revenue to accept travel expenses paid for by a nonprofit association under the circumstances described in the request.

I. BACKGROUND

The Colorado Department of Revenue (“DOR”) has submitted a request to the Independent Ethics Commission (“IEC” or “Commission”) asking whether the Executive Director, Barbara Brohl¹, may accept reimbursement of conference fees and travel expenses in excess of \$53 to speak at a conference in Alexandria, Virginia sponsored by the National Alcohol Beverage Control Association (“NABCA”). Ms. Brohl has been asked to serve on a panel regarding the similarities between the regulation of marijuana and alcohol, and other issues relating to the regulation of marijuana in Colorado. Another speaker was originally on the panel, but cannot attend; Ms. Brohl has been invited to take his place. The other panelists include a representative from the State of Washington and a representative of a pro-legalization advocacy group. Ms. Brohl has informed the Commission that she will only attend the conference on the day she is

¹ Ms. Brohl has waived confidentiality relating to this request.

scheduled to speak. NABCA is a trade association with nonprofit status pursuant to section 501(c)(6) of the regulations of the Internal Revenue Service.

II. JURISDICTION

The IEC finds that the Executive Director of the Colorado Department of Revenue is a government employee and subject to the jurisdiction of the 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) 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.

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

(e) Admission to and cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or answer questions as part of the scheduled program.

(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.

IV. DISCUSSION

A. *Waiver of Registration Fee*

B. *Acceptance of Travel Expenses*

In Position Statement 12-01, the Commission set forth several factors to consider in determining if gifts of travel are gifts to covered individuals. Those factors are:

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.

In evaluating this request, the Commission believes the payment of travel expenses in this instance are not gifts to covered individuals. The invitation went to the Executive Director of the Department of Revenue *ex officio*, based on her position within Colorado government and her knowledge and expertise in the regulation of marijuana. These issues are clearly within her public duties. Based on the information provided to the Commission, this trip would be educational; it is not primarily a networking opportunity for the requestor. The requestor has informed the Commission that her attendance at this conference and speaking about Colorado's experience in the regulation of marijuana provides a benefit to the state in that there is a misconception across the country about the legalization of marijuana, and Colorado is often the subject of jokes. She states that after she speaks to groups, "...they come away with a much better view

of how Colorado is trying to regulate this industry and that we take our responsibility very seriously. This allows us to clear up a lot of misinformation and hopefully, keep the jokes to the minimum.” The conference would also allow her to speak to regulators from states that Colorado does not usually interact with, and learn from them about issues which may be relevant to Colorado.

Moreover, the requestors are not in a position to take direct official action with respect to the donors, and therefore there is no apparent conflict of interest or appearance that these invitations were made to curry favor with these particular individuals. The Commission therefore believes that this trip is not a gift to a covered individual and is permissible

The Commission notes that Article XXIX section 3(3)(e) provides an exception to the gift ban for the acceptance of free admission to an event when the recipient is appearing to speak or answer questions as part of the scheduled program. Ms. Brohl’s participation on a panel would clearly fit within that exception, and the waiver of the conference cost is permissible.

IV. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for employees of the Colorado Department of Revenue to accept a waiver of registration fees and travel 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: February 25, 2014