

State of Colorado



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INDEPENDENT ETHICS COMMISSION

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Advisory Opinion 13-03

(Travel Paid for By a Third Party)

SUMMARY: It would be permissible for the Secretary of State to accept travel expenses from a third party based on the circumstances of this request.

I. BACKGROUND

The Colorado Secretary of State (“SOS”) has submitted a request to the Independent Ethics Commission (“IEC” or “Commission”) asking whether it is permissible for the Secretary to accept reimbursement for to a conference he is attending as a speaker.¹

The Secretary has been invited to *speak in* his official capacity at the National Notary Association’s (“NNA”) annual conference, scheduled for June 2-5 in Austin, Texas. The total cost of the conference, including registration, travel and lodging is approximately \$1200. The NNA has offered to pay the Secretary’s expenses, including travel, lodging, meals and transportation to and from the airport. There is no information about the structure and organization of the association on its web site

(www.nationalnotary.org/conference), although the conference itself is sponsored by

¹ The Secretary submitted a request listing numerous trips. Because of the similarities between several of these trips and the issues in Complaint 12-07 currently pending before the Commission, the Commission agreed to respond to those trips in which travel expenses were to be paid by a third party. One of those trips was withdrawn, leaving this as the only remaining request.

insurance companies and loan companies. The IEC therefore assumes that it gets more than 5% of its profits from for profit sources. Colorado currently is not a member of the NNA. The NNA website provides a general outline of the Conference, but no specifics on the content of the workshops and discussions. The Commission has been told that the Secretary will be a keynote speaker and will speak on e-training issues. The website does list a Gala Banquet on the first night, which is separately expensed for the conference. The Secretary specifically has been invited to the Gala Banquet.

II. JURISDICTION

The IEC finds that the Secretary of State is a “public officer” and therefore is subject to Commission’s jurisdiction. CO Const. Art. XXIX, sec. 2(6).

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, rewards, promises or negotiations of future employment, favors or services, honoraria, 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:

(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

The Commission analyzes this trip in accordance with the guidelines set forth in Position Statement 12-01 (Travel). According to those guidelines, the first question asked is whether the gift is to a covered individual, or whether the gift of travel is more appropriately considered a gift to a governmental entity. Among the factors to consider are whether the primary benefit is to the covered individual or the entity he or she works for, whether it is within his or her duties, whether the offer is *ex-officio*, and whether there is any indication of a conflict of interest or appearance of impropriety.

According to the request, the Secretary will be participating on a panel with other secretaries of state and will speak on issues related to e-training. The regulation and licensing of notaries is within the responsibilities of the Secretary of State. This trip appears therefore to be *ex officio* and within the official duties of the Secretary of State.

The Commission reminds the Secretary that purely social and entertainment events, such as the Gala Banquet, are not considered part of the conference. This event is separate and distinct from the educational portions of the conference, and is charged separately from the other events.

V. CONCLUSION

It would be permissible for the Secretary of State to accept the gift of travel under the circumstances of this request. The Commission cautions public officials and

employees that specific facts may alter the Commission's conclusions. 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

Dan Grossman, *Chair*
Sally H. Hopper, *Vice Chairperson*
Rosemary Marshall, *Commissioner*
Bill Pinkham, *Commissioner (Did not participate)*
Matt Smith, *Commissioner*

Dated: April 08, 2013