

Independent Ethics Commission

January 21st, 2013

Via email [jane.feldman@state.co.us](mailto:jane.feldman@state.co.us)

RE: REQUEST FOR AN ADVISORY OPINION REGARDING TRAVEL  
REIMBURSEMENT

Dear Commissioners,

On behalf of the Colorado Secretary 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 reimbursement for travel expenses the Secretary will incur in attending and participating in The College of William and Mary Spring Election Law Symposium.

### **Facts**

1. The Secretary has been invited to participate in the above-mentioned symposium, which takes place on February 21, 2013, in Williamsburg, Virginia.<sup>1</sup>
2. The College of William and Mary, the entity hosting and organizing the symposium, is a public university in the Commonwealth of Virginia college and university system.
3. “Election Day Delays” is the specific topic of the symposium, and the Secretary’s appearance is as Colorado’s chief election official.
4. Specifically, the Secretary has been asked to participate because the symposium organizers believe that “Colorado has a lot to teach other states on this issue” and because they “need an election administrator” to round out the list of panelists.
5. The College of William and Mary has offered to reimburse the Secretary for the expenses.
6. The estimated cost of a round-trip flight to Newport News, Virginia, is \$349.80. The estimated cost of a hotel room near the college for two nights is \$XXX.XX.

### **Previous IEC Interpretations**

First, the reimbursement is exempt from the gift ban provisions under section 3 (3) (f) of Article XXIX, which explicitly exempts reimbursement of travel expenses by other state and local governments. 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.” (Emphasis

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<sup>1</sup> Invitation communication, attached.

added.) As mentioned above, The College of William and Mary is a public university in the Commonwealth of Virginia college and university system. Because the Commonwealth of Virginia is paying for the travel, the reimbursement is exempt from the gift ban.

Additionally, in Position Statement 12-01, the IEC offered the following factors for consideration in weighing the permissibility of travel reimbursement:

1. *Is the offer to a specific individual or to a designee of an agency or governmental agency?*

The offer is to the Secretary of State as Colorado's chief election official, not to Scott Gessler in his personal capacity.

2. *Is the offer ex officio?*

The offer is to the Secretary by virtue of his specific position as Colorado's chief election official and his expertise in election administration.

3. *Is the event related to the public duties of the covered individual?*

There is a nexus between the Secretary's expertise and functions as a public official and the subject of the symposium. The symposium specifically involves election administration, and the Secretary's expertise is sought in formulating ideas to improve election administration nationwide.

4. *Is there existing or potential conflict of interest or appearance of impropriety?*

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

Past IEC decisions have not clarified whether activities related to election administration, including the participation on an educational panel, are political or partisan in nature. Moreover, the IEC has not provided guidance as to whether participation in political or partisan activities as a statewide elected official (1) falls within the Commission's jurisdiction; and (2) if so, whether such political or partisan activity is a violation of Amendment 41. Because the nature of the conference is election related and, therefore, could be (mis)construed as political or partisan, the Secretary seeks this advisory opinion to clarify this point.

Other election officials, from both the state and federal level and from both political parties, will participate in the symposium. Additionally, the Secretary takes no official actions with respect to The College of William and Mary.

5. *What is the purpose of the trip or conference?*

The symposium is “a focused exercise in which panelists and students come together to produce a set of bipartisan recommendations for remedies to the problem of election delays.”<sup>2</sup> The purpose of the symposium is educational.

Attendees include Robert Bauer, former White House Counsel and general counsel to the Democratic National Committee, Doug Chapin of the Humphrey School of Public Affairs at the University of Minnesota, John Fortier of the Bipartisan Policy Council, and Cleta Mitchell of Foley & Lardner.

Thank you in advance for your timely consideration of this request for an advisory opinion. Because the symposium is to take place February 21, 2013, time is of the essence.

Respectfully submitted,

Suzanne Staiert  
Colorado Deputy Secretary of State

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<sup>2</sup> Symposium Agenda, attached.