

STATE OF COLORADO
Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Scott Gessler
Secretary of State

Suzanne Staiert
Deputy Secretary of State

Ms. Maureen Toomey
Assistant Director
1300 Broadway
Suite 240
Denver, Colorado 80203

*Advisory opinion 14-13
Request*

May 20, 2014

Re: Request for an Advisory Opinion regarding travel to the Republican National Lawyer Association's National Election Law Seminar

Ms. Toomey,

In accordance with the Independent Ethics Commission's (IEC) Rules of Procedure, I am writing to request an advisory opinion from the IEC regarding an upcoming seminar sponsored by the Republican National Lawyer Association (RNLA). The seminar is in August of this year. Specifically, RNLA has invited Scott Gessler, the Colorado Secretary of State and a prominent election-law attorney, to speak at its annual National Election Law Seminar, which has previously been approved Continuing Legal Education (CLE) program designed to train and educate election-law attorneys on recent trends in election law. Accordingly, I write to seek the IEC's opinion the following question:

1. Does Amendment 41 prohibit me from spending staff time and other office funds to attend the RNLA conference with Secretary Gessler?

Specific facts regarding the request

The RNLA is a nonprofit organization with a targeted mission of open, fair, and honest elections.

The RNLA is a nonprofit entity and is registered under section 527 of the Internal Revenue Code. As specified on its website, the RNLA is the principal national organization of Republican lawyers focused primarily on promoting "open, fair and honest elections at all levels of American society in a non-discriminatory manner and [providing] access to the polls to all qualified and eligible voters." The RNLA is funded in part through membership fees (which are as low as \$10 for law students and can be as high \$300 for "sustaining members") and in part through donations and sponsorships from for-profit entities. For purposes of this request, the IEC should operate on the belief that the RNLA receives more than five percent of its funding from for-profit entities.

The RNLA's National Election Law Seminar affords election lawyers an opportunity to collaborate on policy issues and share expertise.

As a nonprofit organization with a focus on fair and honest elections, one of the many important roles of the RNLA is to provide election-law training from pertinent election-law professionals. To this end, the RNLA conducts an annual National Election Law Seminar designed to educate both expert and novice lawyers on what is happening in American elections. Attendees may attain up to 11 hours of CLE credit, including one hour of ethics credit; in the past, the Colorado Supreme Court has approved the seminar for CLE credit. This means that the Supreme Court's Board of Continuing Legal and Judicial Education found that RNLA election-law seminar is an "educational activity which has as its primary objective the increase of professional competence of registered attorneys and judges."

At the seminar, attorneys receive instruction from top election-law attorneys, former and current state chief election officers, and state party counsels.

Due to the seminar's subject matter and the depth of the staff involvement it would be beneficial for me to accompany the Secretary to the seminar.

The Secretary is invited to speak at the seminar on disclosure laws and reporting requirements. The focus of the presentation will be the prosecution of standards of conduct and reporting requirements for partisan gain. The presentation will include topics such as:

- The abuse of the Grand Jury process
- John Doe subpoenas
- Due Process requirements
- First Amendment violations and the chilling effect on speech and association
- Funding a legal defense
- Comparative analysis of cases in Colorado, Wisconsin, Nevada and Alaska

1. *Does Amendment 41 prohibit Secretary of State staff from the using state resources to support and attend the seminar?*

The commission has previously found (and then subsequently *not* found) that the use of state resources to attend a conference such as this is a violation of other standards of conduct; specifically, the IEC has found such use to be a breach of the public trust under section 24-18-103 (1), C.R.S., asserting that using state resources for a conference is not an allowable expense under state fiscal rules. Despite this early IEC interpretation, the Commission recently dismissed a complaint containing similar allegations.

In addition to accompanying the Secretary, I am seeking an opinion on my attendance of the conference. As noted in the invitation, last year's speakers included the Democrat and Republican chairs of the Obama's Presidential Commission on Election Administration. The Secretary and staff were deprived of the opportunity to attend the seminar last year because of the IEC's ruling. It is unclear at this point how the IEC intends to delineate the types of state resources that are permitted for travel and training which it deems partisan.

The costs related to my attendance at the seminar include airfare, room and \$239 conference fee.

Thank you for your consideration of this matter.

Suzanne Staiert
Deputy Secretary of State