



John W. Hickenlooper  
Governor

Barbara J. Kelley  
Executive Director

**REQUEST FOR ADVISORY OPINION**

TO: The Colorado Independent Ethics Commission

FROM: Doug Dean, Director  
Colorado Public Utilities Commission

DATE: May 24, 2013

The Colorado Public Utilities Commission (“PUC”) resides in the Department of Regulatory Agencies and consists of three Commissioners appointed by the Governor and confirmed by the Senate. The undersigned, on behalf of the PUC, requests the issuance of an advisory opinion from the Independent Ethics Commission (“IEC”) with respect to the following issue arising under Article XXIX of the Colorado Constitution:

**ISSUE**

May Chairman Epel accept waiver of fees and costs for attendance, meals, and accommodations to attend, participate, and be an invited keynote speaker at the 4<sup>th</sup> Annual Aspen Institute Clean Energy Forum (Forum), June 20-23, 2013? The Aspen Institute, a nonprofit organization,<sup>1</sup> is organizing the national event in Aspen, Colorado, and is offering to waive the cost of registration, meals, and 3-nights’ accommodation at the conference campus for invited speakers, including Chairman Epel.

**APPLICABLE LAW**

Section 3 of Article XXIX of the Colorado Constitution sets forth restrictions applicable to the acceptance of gifts by public officers, members of the general assembly, local government officials, and government employees. Subsection (2) of section 3 provides:

(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 a 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 of 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

<sup>1</sup> The Aspen Institute is a nationally renowned nonprofit organization. Our information shows that, in 2012, 8% of its funding was received from for-profit entities. While the PUC does not believe the waiver of fees constitutes a “gift” to a covered individual, the exception in Section 3(3)(f) of Article XXIX does not apply, because The Aspen Institute received more than 5% of its funding from for-profit entities.



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.

\*Adjusted to \$53 pursuant to subsection (6) of section 3.

## **POSITION STATEMENTS AND OPINIONS**

The PUC believes that the waiver of fees from the Aspen Institute, including the cost of meals and accommodations at the Aspen Meadows Conference Center campus, is permissible in these circumstances. The offer to attend was *ex officio*, and Chairman Epel's speech and participation will serve educational purposes related to advancing clean energy initiatives in Colorado.

## **BACKGROUND**

**The Aspen Institute:** The Aspen Institute is an international nonprofit educational and policy studies organization based in Washington, DC. Its mission is to "foster leadership based on enduring values and to provide a nonpartisan venue for dealing with critical issues." *The Aspen Institute Mission Statement*, available at [www.aspeninstitute.org/about](http://www.aspeninstitute.org/about) (last visited May 22, 2013). Funding is provided for the Aspen Institute through various grants, contributors, and through conference fees. *Aspen Institute 2011 Annual Report*, pp. 50-51, available at [www.aspeninstitute.org/about/annual-report](http://www.aspeninstitute.org/about/annual-report) (last visited May 22, 2013). Contributing organizations and individuals are diverse and include industries, academics, and philanthropists. The organization provides educational and policy study opportunities on a wide array of topics including: education; energy and the environment; justice and equality; philanthropy and social enterprise; security and global affairs; and health.

**Scheduled Program:** The Forum includes 50-60 executives, entrepreneurs, experts, policy makers and academics from around the country, and it is intended to help "build a coalition of leaders across multiple sectors" that will bring together the "collective desire for a clean energy future with current systemic political, technical and economic realities." The Forum is held from June 20 – 23, 2013, and includes scheduled sessions and meals for participants. An optional outdoor activity is also provided for participants on Saturday, June 22, 2013.

The agenda has not yet been finalized as of the date of this submission; however, the Chairman was requested to present a speech and provide his expertise on various topics of discussion, including: financing a clean energy revolution; developing new business models for the power industry; reinventing corporate energy mix; getting to clean(er) energy; and leadership for a clean energy revolution. The Chairman has the option of speaking on one or multiple topic areas; he is invited to participate in the entire conference. He will confirm attendance and be added to the schedule in the event the IEC agrees that acceptance of the waiver is appropriate. A copy of the currently available online registration and schedule is attached.

**Accommodations, Meals, and Fees:** Fees for the Forum are generally \$2,800 and include accommodations for three nights plus all meals during the forum. Representatives from government, academia, or an NGO, are entitled to a 50% discount (\$1,400 value). Participants are provided accommodations at the Aspen Institute's on-site campus, Aspen Meadows. All participants are responsible for travel arrangements to get to Aspen. The Forum costs for registrants are not separately allocated between registration, meals, and accommodations.<sup>2</sup>

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<sup>2</sup> Upon request, the PUC received the Aspen Institute's accounting for all costs waived for attendance. The \$1,400 cost includes approximately the following: accommodations - \$920 (\$289/night plus \$18 fee); meal expenses - \$150 (\$50/day); meeting costs - \$180 (\$60/day).

The Chairman hopes to attend the entire conference to speak, participate, and learn from other national industry and policy leaders. His attendance is contingent on the ability to stay at the Aspen Meadows Conference Center campus. As the Forum is in Colorado, the PUC has approved reimbursement for his travel expenses to and from the Forum, which are not covered in the waived expenses. He does not plan to attend any extracurricular or optional events once at the Forum. The Chairman is eligible for the government discount; therefore the amount being waived in fees is \$1,400 for registration, meals, and accommodations for the 4-day Forum.

## **CONSIDERATIONS APPLIED**

Considering the factors in Position Statement 12-01, waiver of travel expenses (*i.e.*, accommodations) paid by the Aspen Institute for participation in the Forum is appropriate. Similar to the IEC's opinion set forth in Advisory Opinion 13-02, the invitation to attend and participate in the Forum is *ex officio* and was extended to the Chairman due to his position at the PUC and his particular area of expertise regarding clean energy initiatives. Because the waiver of fees is not a gift to a covered individual under this analysis, waiver of fees for meals and registration likewise are appropriate.<sup>3</sup>

### **1. The request to participate is not intended to inure personal benefit.**

In Section A.1, the IEC asks that agencies consider whether the offer is to a specific individual, or to a designee of an agency or governmental entity. While this section notes that offers to specific individuals are more likely to inure personal benefit, this is not the case with the Forum. The Chairman's participation in the Forum is due to his responsibilities and stature as the Chairman of the Colorado PUC and, acutely, to his background and expertise in clean energy. As discussed below, the offer to participate in the Forum is *ex officio*; the invitation is to the Chairman specifically because of his position and title at the PUC, and due to his personal expertise.

### **2. While the offer is to the Chairman directly, the offer is *ex officio*.**

Section A. 2 further asks that agencies consider whether the offer is *ex officio*. The Aspen Institute is a nonpartisan nonprofit. Its forums create opportunities for national, regional, and international discussions on important issues that benefit Colorado. The request for participation highlights the desire to engage leaders in the discussion, specifically clean energy. The Forum will address important matters over which the Commission has authority, namely, regulating Colorado's energy needs and fostering clean energy initiatives. The Chairman of the PUC is in a distinctive position to provide insights and add to the discussions as a leader in the field of clean energy. Therefore, the Chairman's involvement is related directly to his position as the designated leader of the Colorado PUC. His attendance inures a benefit to the PUC, and Colorado generally, as he is able to gain valuable insight that can be applied at the PUC and represent Colorado's interests at the Forum. His speech and participation also will add to the continuing dialogue and analysis of clean energy issues, all to the benefit of Colorado and other jurisdictions.

### **3. The event is related to the public duties of the Chairman.**

Section A. 3 of Position Statement 12-01 requests that agencies consider whether the event is related to the individual's public duties. As noted in § 40-2-115, C.R.S., it is part of a Commissioner's public duty

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<sup>3</sup> In the event that conference were a "gift" to a covered individual, we note that, as a speaker the Chairman qualifies for waiver of registration fees per exceptions in Section 3(3)(e) of Article XXIX. Because the offer to attend and participate is *ex officio*, the PUC believes the exceptions in Article XXIX, including those in Section 3(3)(e) and (f) discussed above, need not be applied here.

to cooperate with other states and with the federal government, including agencies of the United States, in connection with any matter arising under Title 40, the Public Utilities Law. The Forum is organized by a national research institute to bring together executives, experts, entrepreneurs, policy makers, and thought leaders for values-based discussions on technological, policy and investment challenges and opportunities as they relate to the economy, security, and the environment. This Forum provides the type of collaborative and innovative discussions that will allow for state, federal, and local cooperation. Further, participating in the Forum allows the Chairman to gain even greater insight upon stakeholder and industry concerns as he decides technically-intricate energy matters in his official capacity as a member of the PUC.

**4. There is no potential conflict of interest or appearance of impropriety.**

Section A. 4 requests consideration of potential conflicts of interest or appearances of impropriety. Because this Forum is directly related to the duties of the Commissioner and the interests of the PUC and Colorado, no appearance of impropriety exists. While industry leaders, including those from regulated utilities like Public Service Company of Colorado, may be invited and may participate at the Forum, these individuals' inclusion is to broaden the overall perspective and information presented at the Forum. Industry leaders are not invited for lobbying or networking purposes. This range of participants incorporates broad perspectives, which will further enable state, local, and regional leaders to reach meaningful solutions to complex issues.

Funding for the Aspen Institute also does not show any appearance of impropriety. The Aspen Institute is funded, in small part, by for-profit entities; however, these entities are diverse, many of which are not involved in energy regulation or other matters involving PUC authority. Additionally, 92% of funding for the Aspen Institute is provided by individual donors, grants, fees, and other contributions. These funding sources are broad and diverse, adding to the Aspen Institute's reputation as an impartial and well-respected nonprofit organization that furthers discussions around important national, regional, and local debates.

**5. The purpose of the trip is education, innovation, and representation to advance Colorado's interests.**

Section A. 5 asks that agencies consider the purpose of the trip or conference. Colorado and the PUC have invested interests in having knowledgeable, experienced representation at this Forum to help further clean energy innovation throughout the state and the region. The Chairman's attendance at the Forum furthers these goals.

**REQUEST**

The undersigned, on behalf of the Colorado Public Utilities Commission, respectfully requests an Advisory Opinion from the Independent Ethics Commission that affirms the appropriateness of Chairman Epel accepting waiver of fees in the circumstances set forth above. Because this event will be held June 20-23, 2013, we request that the IEC consider it at the publicly scheduled June 7, 2013, meeting. In the event the IEC requires any additional information, please contact the undersigned. Thank you in advance for your consideration.

Submitted By:



Doug Dean, Director  
Colorado Public Utilities Commission  
Department of Regulatory Agencies  
Email: [doug.dean@state.co.us](mailto:doug.dean@state.co.us)