

April 16, 2014

Re: Advisory Opinion Request 14-08

Dear Commissioners:

Below is an advisory request from Barbara Brohl, Executive Director of the Department of Revenue and Mike Dixon, the Senior Director for the Department of Motor Vehicles. They are asking for an advisory opinion regarding gifts from a group called the Donor Alliance.

The material consists of the original request via email and answers to additional questions. Mike Dixon, as well as Driver's License Operations Director David Lindsay, are planning on attending the IEC meeting on April 14, 2014.

Maureen Toomey

IEC Assistant Director



Tsuchimoto - DOR, Mia Apr 2 (7 days ago)

to me, Barbara, Michael

Hi Maureen,

The following request is being submitted to the IEC on behalf of Barbara Brohl and Mike Dixon. Mr. Dixon is the Senior Enforcement Director for the Division of Motor Vehicles.

Based on 42-2-107, C.R.S., the Colorado Department of Revenue's Division of Motor Vehicles maintains a partnership with Donor Alliance (a federally-designated, non-profit organ procurement organization) . Specifically, in 42-2-107 (4)(b)(I)(B) it states "that state government should play a role in increasing the availability of human organs and tissue to procurement organizations, as defined in section 12-34-102, C.R.S., by acting as a conduit to make moneys available for promoting organ and tissue donation and that this role constitutes a public purpose." Further, in 42-2-107 (4)(b)(V), it states that "the department shall inquire of each applicant at the time the completed application is presented whether the applicant is interested in making a donation of one dollar or more and shall specifically inform the applicant of the option for organ and tissue donations." Therefore, as part of their daily duties, C.R.S. directs that Driver's License Examiners shall address organ and tissue donation with each customer. The statute specifically mentions Donor Alliance, Inc, as the organization the Department is to work with in this endeavor.

Donor Alliance would like to offer small gifts to Driver's License Examiners in appreciation for their efforts. Items that may be given to employees include: Polo Shirts, lunches, gift baskets, etc. While individually these gifts are not expensive, their cumulative yearly cost can add up. In addition, Donor Alliance is also offering to provide free tickets to Driver's License employees and their family members (up to 4 free tickets) to Elitch Gardens in Denver (a Main Gate ticket value of \$46.99 each for each adult ticket - children's tickets are slightly less).

In accordance with State law, is it allowable for only Driver's License Examiners to accept these items from Donor Alliance? Would these items be subject to the cumulative \$53 gift limit? Are there any items that should be excluded as gifts? Would the acceptance of any of these gift constitute a conflict of interest? Whatever the gift amount deemed appropriate, what are the acceptable records necessary to prove the amount does not exceed the limit?

Thank you!

Mia Tsuchimoto | Executive Director's Office
Colorado Dept. of Revenue

Tsuchimoto - DOR, Mia Apr 7 (2 days ago)

to **Maren, David**, me, Michael, Barbara

Hi Maureen,

I apologize for the delay. Below are the answers to your questions:

1. Are these "gifts" a one-time occurrence from DA? Or is this expected to happen annually, or on-going in some way?

It is anticipated that these items would not be a one-time occurrence. Donor Alliance has expressed interest in providing these items throughout the year, every year.

2. Are they to specific individuals or to the agency in general? How are you going to distribute them, if to the agency? Either way, how many individuals do you expect to receive gifts?

These items are not personalized and would be provided to individuals (i.e., shirts) and entire offices (i.e., gift basket, etc). There are approximately 245 Driver's License employees.

3. Are any of the gift items valued at more than \$53.00?

None of the individual items would have a value over \$53.00. That said, if Donor Alliance provides multiple tickets to Elitch Gardens (for example, to the employee and at least one other family member), then the total cost would exceed \$53. The tickets provided in the past included a meal voucher. On 4/4/14 the Elitch Gardens' website quotes group tickets with meal vouchers at \$39.99 each.

4. What is the estimated total value of the gifts?

Typically during the course of the year Donor Alliance has provided each employee, one tee shirt, one polo shirt, lunch for all employees in the office (usually pizza), gift basket (usually fruit, candy nuts etc. to be share among all employees in the office). The cost of these gifts are estimated to be \$35 - 40 for each employee. Additionally, each employee and up to three members of their family are offered an invitation to Elitch Gardens. The cost for one ticket is advertised at \$39.99 each. The estimated value depends on the number of family members attending. For (2) tickets \$79.98, (3) \$119.97, (4) \$159.96

5. Why is Donor Alliance offering to give gifts at this time? Has it offered before?

Donor Alliance would like to provide these items to express their appreciation for the work Driver's License Examiners do (as required by statute) in support of organ and tissue donation. Donor Alliance has provided non-personalized items and tickets to Elitchs (and up to 3 additional family members) periodically in the past.

This is Donor Alliance's primary method of signing people up to be organ and tissue donors. The number of organ donors who registered or contributed in driver's license office statewide in 2013 was 906,905. This equates to each employee signing up 71 donors per week, 308 donors per month, or 3,702 donors for 2013.

The Statute requires that the Division of Motor Vehicle Driver's License Examiners ask this question of each applicant, and will continue to do so even in the event these gifts are not allowed. As a non-profit, Donor Alliance has limited funds to do marketing and donor drives, and because DMV is such a strong partner, and conducts this activity on their behalf, this is simply an attempt to say "Thanks."

Because DMV will perform this activity regardless of the gifts, the absence or presence of them will not influence DMV in any manner.

6. Is Donor Alliance giving gifts to other DMV's in other states?

Yes. They also have a presence in Wyoming and have provided similar items to their Driver's License Program employees.

Advisory Opinion 14-08 (Acceptance of Gifts)

Commissioners:

Attached are the statutes that Mike Dixon, the Senior Director for the Department of Motor Vehicles, mentioned when he was present at the last meeting on April 14, 2014. I underlined the term Donor Alliance. Kyle is going to summarize the statutes for you.

I am also including here the materials that were sent out in the last package, which also include reference to the statutes.

Maureen

C.R.S. 42-2-107

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) ***

TITLE 42. VEHICLES AND TRAFFIC
DRIVERS' LICENSES
ARTICLE 2.DRIVERS' LICENSES
PART 1. DRIVERS' LICENSES

C.R.S. **42-2-107** (2013)

42-2-107. Application for license or instruction permit - anatomical gifts - donations to Emily Maureen Ellen Keyes organ and tissue donation awareness fund - legislative declaration - repeal

(1) (a) (I) To be acceptable, every application for an instruction permit or for a driver's or minor driver's license must be made upon forms furnished by the department and accompanied by the required fee. The fee for an application for any instruction permit is thirteen dollars and forty cents. The department shall transfer the fee to the state treasurer, who shall credit ten dollars to the highway users tax fund and three dollars and forty cents to the licensing services cash fund created in [section 42-2-114.5](#); except that, for fiscal years 2012-13 through 2014-15, the state treasurer shall credit the fee to the licensing services cash fund created in [section 42-2-114.5](#). Every applicant shall submit with the application proof of age or proof of identity, or both, as the department may require.

(II) If an applicant is applying for an instruction permit or driver's or minor driver's license for the first time in Colorado and the applicant otherwise meets the requirements for such license or permit, the applicant shall receive a temporary license or instruction permit pursuant to [section 42-2-106 \(2\)](#) until the department verifies all facts relative to such applicant's right to receive an instruction permit or minor driver's or driver's license including the age, identity, and residency of the applicant.

(b) (I) An applicant who submits proof of age or proof of identity issued by an entity other than a state or the United States shall also submit such proof as the department may require that the applicant is lawfully present in the United States.

(II) An applicant who submits, as proof of age or proof of identity, a driver's license or identification card issued by a state that issues drivers' licenses or identification cards to persons who are not lawfully present in the United States shall also submit such proof as the department may require that the applicant is lawfully present in the United States.

(c) The department shall not issue a driver's or minor driver's license to a person who is not lawfully present in the United States.

(d) The department may not issue a driver's or minor driver's license to any person who is

not a resident of the state of Colorado. The department shall issue such a license only upon the furnishing of such evidence of residency as the department may require.

(2) (a) Every application shall state the full name, date of birth, sex, and residence address of the applicant; briefly describe the applicant; be signed by the applicant with such applicant's usual signature; have affixed thereon the applicant's fingerprint; and state whether the licensee has ever been licensed as a minor driver or driver and, if so, when and by what state or country and whether any such license has ever been denied, suspended, or revoked, the reasons therefor, and the date thereof. These statements shall be verified by the applicant's signature thereon.

(b) (I) In addition to the requirements of paragraph (a) of this subsection (2), an application shall state that:

(A) The applicant understands that, as a resident of the state of Colorado, any motor vehicle owned by the applicant must be registered in Colorado pursuant to the laws of the state and the applicant may be subject to criminal penalties, civil penalties, cancellation or denial of the applicant's driver's license, and liability for any unpaid registration fees and specific ownership taxes if the applicant fails to comply with such registration requirements; and

(B) The applicant agrees, within thirty days after the date the applicant became a resident, to register in Colorado any vehicle owned by the applicant.

(II) The applicant shall verify the statements required by this paragraph (b) by the applicant's signature on the application.

(2.5) (a) Any male United States citizen or immigrant who applies for an instruction permit or a driver's license or a renewal of any such permit or license and who is at least eighteen years of age but less than twenty-six years of age shall be registered in compliance with the requirements of section 3 of the "Military Selective Service Act", 50 U.S.C. App. sec. 453, as amended.

(b) The department shall forward in an electronic format the necessary personal information of the applicants identified in paragraph (a) of this subsection (2.5) to the selective service system. The applicant's submission of an application shall serve as an indication that the applicant either has already registered with the selective service system or that he is authorizing the department to forward to the selective service system the necessary information for such registration. The department shall notify the applicant that his submission of an application constitutes consent to registration with the selective service system, if so required by federal law.

(3) (a) Except as otherwise provided in paragraph (b) of this subsection (3), an application for a driver's or minor driver's license shall include the applicant's social security number, which shall remain confidential and shall not be placed on the applicant's driver's or minor driver's license; except that such confidentiality shall not extend to the state child support enforcement agency, the department, or a court of competent jurisdiction when requesting information in the course of activities authorized under article 13 of title 26, C.R.S., or article 14 of title 14, C.R.S. If the applicant does not have a social security number, the applicant shall submit a sworn statement made under penalty of law, together with the application, stating that the applicant does not have a social security number.

(b) If federal law is changed to prohibit the collection of social security numbers on driver's license applications, the department shall automatically stop its practice of including

applicants' social security numbers on applications for driver's and minor driver's licenses as specified in paragraph (a) of this subsection (3).

(c) A sworn statement that is made under penalty of perjury shall be sufficient evidence of the applicant's social security number required by this subsection (3) and shall authorize the department to issue a driver's or minor driver's license to the applicant. Nothing in this paragraph (c) shall be construed to prevent the department from cancelling, denying, recalling, or updating a driver's or minor driver's license if the department learns that the applicant has provided a false social security number.

(4) (a) (Deleted by amendment, L. 2004, p. 1891, § 4, effective August 4, 2004.)

(b) (I) (A) The general assembly hereby finds, determines, and declares that the availability of human organs and tissue by voluntary designation of donors under the provisions of the "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, C.R.S., is critical for advancements in medical science to occur and for the successful use of various medical treatments to save and prolong lives.

(B) The general assembly further finds, determines, and declares that state government should play a role in increasing the availability of human organs and tissue to procurement organizations, as defined in [section 12-34-102, C.R.S.](#), by acting as a conduit to make moneys available for promoting organ and tissue donation and that this role constitutes a public purpose.

(II) There is hereby created in the state treasury the Emily Maureen Ellen Keyes organ and tissue donation awareness fund, which shall consist of all moneys credited thereto from all sources including but not limited to moneys collected from voluntary contributions for organ and tissue donation pursuant to subparagraph (V) of this paragraph (b) and [section 42-2-118 \(1\) \(a\) \(II\)](#). All moneys in the fund are hereby continuously appropriated to the department of the treasury and shall remain in the fund to be used for the purposes set forth in subparagraph (III) of this paragraph (b) and shall not revert to the general fund or any other fund. All interest derived from the deposit and investment of this fund shall be credited to the fund. At least quarterly, the state treasurer shall transfer all available moneys in the Emily Maureen Ellen Keyes organ and tissue donation awareness fund to donor alliance, inc., or its successor organization, as directed by sub-subparagraph (A) of subparagraph (III) of this paragraph (b).

(III) At least quarterly, the state treasurer shall transfer all available moneys from the Emily Maureen Ellen Keyes organ and tissue donation awareness fund:

(A) To donor alliance, inc., or its successor organization, to provide funding for activities to promote organ and tissue donation through the creation and dissemination, by means of electronic media and otherwise, of educational information including public service announcements and information to increase awareness in the medical professions and related fields. Donor alliance, inc., or its successor organization, shall create, by amendment to its articles of incorporation or bylaws or otherwise, as appropriate, an advisory group to allocate moneys received pursuant to this sub-subparagraph (A). Such advisory body shall include a representative of any qualified transplant organization. Such organizations shall include those for organs, tissue, bone marrow, and blood. The advisory body created under this sub-subparagraph (A) shall report in writing in a form and manner determined by the department and at such intervals as required by the department on the use of moneys received under this sub-subparagraph (A). No moneys made available pursuant to this paragraph (b) shall be used to encourage fetal tissue donation.

(B) (Deleted by amendment, L. 98, p. 1172, 9, effective June 1, 1998.)

(C) Before any payment to donor alliance, inc., or its successor organization, from the Emily Maureen Ellen Keyes organ and tissue donation awareness fund may be made for any purpose, to the department for the reasonable costs associated with the initial installation of the organ and tissue donor registry, the setup for electronic transfer of the donor information for the organ and tissue donor registry to the federally designated organ procurement organization, and computer programming and form changes necessary as a result of the creation of the organ and tissue donor registry.

(D) To donor alliance, inc., or its successor organization, for the costs associated with educating the public about the organ and tissue donor registry pursuant to [section 12-34-120, C.R.S.](#)

(IV) Appropriations made by the general assembly pursuant to subparagraph (III) of this paragraph (b) shall not exceed moneys in the Emily Maureen Ellen Keyes organ and tissue donation awareness fund that are available for appropriation.

(V) An applicant may make a donation of one dollar or more to the Emily Maureen Ellen Keyes organ and tissue donation awareness fund, created in subparagraph (II) of this paragraph (b), to promote the donation of organs and tissues under the provisions of the "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12, C.R.S. The department shall collect such donations and transmit them to the state treasurer, who shall credit the same to the Emily Maureen Ellen Keyes organ and tissue donation awareness fund. The donation prescribed in this subparagraph (V) is voluntary and may be refused by the applicant. The department shall make available informational booklets or other informational sources on the importance of organ and tissue donations to applicants as designed and approved by the advisory body created under sub-subparagraph (A) of subparagraph (III) of this paragraph (b). The department shall inquire of each applicant at the time the completed application is presented whether the applicant is interested in making a donation of one dollar or more and shall also specifically inform the applicant of the option for organ and tissue donations. The department shall also provide written information designed and approved by the advisory body created under sub-subparagraph (A) of subparagraph (III) of this paragraph (b) to each applicant volunteering to become an organ and tissue donor. The written information shall disclose that the applicant's name shall be transmitted to the organ and tissue donor registry authorized in [section 12-34-120, C.R.S.](#), and that the applicant shall notify the federally designated organ procurement organization of any changes to the applicant's donor status.

(V.5) Designation on a donor's driver's license or permit shall fulfill the release requirements set forth in [section 24-72-204 \(7\) \(b\), C.R.S.](#)

(VI) The provisions of article 16 of title 6, C.R.S., shall not apply to the activities of the department under this paragraph (b).

(VII) This paragraph (b) is repealed, effective July 1, 2018.

(5) (a) (I) Prior to the issuance of a driver's or minor driver's license, the department shall determine if there are any outstanding judgments or warrants entered or issued against the applicant pursuant to [section 42-4-1709 \(7\)](#).

(II) For the purposes of this subsection (5), "outstanding judgments or warrants" does not

include any judgment or warrant reported to the department in violation of the provisions of [section 42-4-110.5 \(2\) \(c\)](#).

(b) If the department determines that there are no outstanding judgments or warrants entered or issued against the applicant and if all other conditions for issuance required by articles 1 to 4 of this title are met, the department shall issue the license.

(c) If the department determines that there are outstanding judgments or warrants entered or issued against the applicant and the applicant is subject to the provisions of [section 42-4-1709 \(7\)](#), the license shall not be issued until the applicant has complied with the requirements of that section. Any person who satisfies an outstanding judgment or warrant entered pursuant to [section 42-4-1709 \(7\)](#) shall pay to the court a thirty-dollar administrative processing fee for each such judgment or warrant in addition to all other penalties, costs, or forfeitures. The court shall remit fifty percent of the administrative processing fee to the department of revenue, and the other fifty percent shall be retained by the issuing court.

(6) Notwithstanding the amount specified for any fee in this section, the executive director of the department by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to [section 24-75-402 \(3\), C.R.S.](#), to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the department by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in [section 24-75-402 \(4\), C.R.S.](#)

HISTORY: Source: L. 94: Entire title amended with relocations, p. 2119, § 1, effective January 1, 1995. L. 95: (5) added, p. 1003, § 1, effective July 1. L. 96: IP(15)(b) amended, p. 1201, § 1, effective June 1; (4) amended, p. 1132, § 1, effective July 1. L. 97: (5)(a) amended, p. 1669, § 2, effective June 5; (2) amended, p. 1000, § 1, effective August 6. L. 98: (4)(a), (4)(b)(II), (4)(b)(III)(B), and (4)(b)(VII) amended, p. 1172, § 9, effective June 1; (6) added, p. 1351, § 93, effective June 1; (1) amended, p. 294, § 1, effective July 1. L. 99: (4)(b)(II) amended, p. 630, § 46, effective August 4. L. 2000: (3) amended, p. 1715, § 11, effective July 1; (4)(b)(III)(C), (4)(b)(III)(D), and (4)(b)(V.5) added and (4)(b)(V) and (4)(b)(VII) amended, pp. 730, 731, 733, § § 8, 9, 14, effective July 1; (1)(a), (1)(c), (1)(d), (2)(a), (3), and (5)(a)(I) amended, p. 1349, § 16, effective July 1, 2001. L. 2001: (1)(a) amended, p. 938, § 2, effective July 1; (2.5) added, p. 646, § 1, effective August 8; (3)(a) amended and (3)(c) added, p. 782, § 1, effective August 8. L. 2002: (1)(b) amended, p. 171, § 1, effective April 2. L. 2004: (4)(a), (4)(b)(II), (4)(b)(III)(C), and (4)(b)(V) amended, p. 1891, § 4, effective August 4. L. 2005: (3)(a) amended, p. 642, § 4, effective May 27. L. 2007: (4)(b)(II), IP(4)(b)(III), (4)(b)(III)(A), (4)(b)(III)(C), (4)(b)(III)(D), (4)(b)(IV), (4)(b)(V), and (4)(b)(VII) amended, p. 307, § 1, effective, March 30; (1)(a)(I) amended, p. 1570, § 2, effective July 1; (4)(b)(I), (4)(b)(III)(C), (4)(b)(III)(D), and (4)(b)(V) amended, p. 799, § 10, effective July 1. L. 2009: (1)(a)(I) amended, ([SB 09-274](#)), [ch. 210, p. 951, § 1](#), effective May 1. L. 2010: (1)(a)(I) amended, ([HB 10-1387](#)), [ch. 205, p. 886, § 1](#), effective May 5. L. 2011: (4)(b)(II) and (4)(b)(III) amended, ([HB 11-1303](#)), [ch. 264, p. 1177, § 99](#), effective August 10. L. 2012: (1)(a)(I) amended, ([HB 12-1216](#)), [ch. 80, p. 263, § 1](#), effective July 1. L. 2013: (1)(c) amended, ([SB 13-251](#)), [ch. 402, p. 2351, § 2](#), effective August 7.

Editor's note: (1) This section is similar to former § 42-2-106 as it existed prior to 1994, and the former § **42-2-107** was relocated to § 42-2-108.

(2) Amendments to subsection (3) by Senate Bill 00-145 and Senate Bill 00-011 were harmonized, effective July 1, 2001.

(3) Amendments to subsections (4)(b)(III)(C), (4)(b)(III)(D), and (4)(b)(V) by Senate Bill 07-037 and House Bill 07-1266 were harmonized.

(4) Section 9 of chapter 402, Session Laws of Colorado 2013, provides that the act amending subsection (1)(c) applies to applications submitted on or after August 1, 2014.

ANNOTATION

Law reviews. For article, "Organ Donation Update", see 13 Colo. Law. 612 (1984).

Annotator's note. Since § **42-2-107** is similar to § 42-2-106 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included with the annotations to this section.

Subsection (3) not unconstitutional when applied to individuals whose religion prohibits the taking of photographs. *Johnson v. Motor Vehicle Div.*, 197 Colo. 455, 593 P.2d 1363, cert. denied, 444 U.S. 885, 100 S. Ct. 179, 62 L. Ed. 2d 116 (1979).

Suspension of a license is not synonymous with suspension of the privilege to drive. Therefore, failure of an applicant to disclose suspension of her driving privilege does not violate the provision that requires disclosure of any license suspension. *Edge v. Dept. of Rev.*, 53 P.3d 652 (Colo. App. 2001).