

State of Colorado



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Advisory Opinion No. 09-04

(Travel Expenses from a Nonprofit Entity: Travel to Turkey)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for a member of the General Assembly and her spouse to accept travel-related expenses on a trip to Turkey. The circumstances presented by the requester satisfy the five conditions set forth in Position Statement 08-02 (Travel), making these travel-related expenses a gift to the government, rather than to the individual state legislator and her spouse.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for advisory opinion, asking whether a member of the General Assembly and her spouse may accept the travel-related expenses of accommodations, meals, ground transportation, and museum visits from The Multicultural Mosaic Foundation, while participating in an intercultural trip to Turkey. The Pacifica Institute in California may also help sponsor this trip.

II. JURISDICTION

The IEC finds that members of the Colorado General Assembly are subject to the jurisdiction of the Commission. CO Const. Art. XXIX (3).

III. APPLICABLE LAW AND PRECEDENT

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, 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 ... 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;

In Position Statement 08-01 (Gifts), as in all subsequent position statements and opinions rendered by the Commission, the Commission interpreted Article XXIX in a manner that preserves what it believes was the intent of the electorate - "to improve and promote honesty and integrity in government and to assure the public that those in government are held to standards that place the public interest above their private interests."

In Position Statement 08-02 (Travel), the Commission recognized that travel that is not expressly exempted from Sec. 3 may nonetheless be permissible in certain circumstances as a gift to the State or local government, rather than to the public official or employee, when certain specified conditions are met.

IV. DISCUSSION

Section 3 prohibits a public official or employee from soliciting, accepting or receiving any gift or other thing of value worth more than \$50 in any calendar year, from a person, without that person receiving lawful consideration of equal or greater value in return, unless it falls under a listed exception. Travel is expressly included on the list of prohibited things of value.

Sec. 3(3)(f) exempts reasonable expenses paid by a nonprofit organization for participating in a fact-finding mission or trip, under certain circumstances. This exception is limited to nonprofits that receive less than 5% of their funding from for-profit entities and organizations.

The requesting member of the Colorado General Assembly has been invited to join the 2009 Intercultural Trip to Turkey. Travel expenses for the requester and her spouse, except for air transportation, would be paid by The Multicultural Mosaic Foundation and possibly, by the Pacifica Institute. Although the list of invitees is not before the Commission, the requester states that various leading figures, such as faith community leaders and academicians in Colorado, are also invited to participate in the trip, as well as other members of the General Assembly. The requester has provided statements from various leaders throughout the country who have participated in similar “intercultural dialog trips” in the past.

In order to decide whether exception (f) applies, the Commission must first determine whether the donors of the gift qualify as nonprofit entities that receive less than 5% of their funding from for-profit entities and organizations. The Multicultural Mosaic Foundation is a nonprofit entity based in Denver that is “dedicated to help

cultivate moral and cultural values in our society by promoting tolerance and dialogue.”

The requester inquired about the entity’s source of funding to ascertain whether Sec. 3(3)(f) would apply, and was told that the funding for 2009 remains unclear at this time.¹

According to the information before us, the Pacifica Institute is also a nonprofit entity and it relies on individual donations and money raised at an annual fundraising dinner.

It is not possible for the Commission to determine whether or not exception (f) would apply with regard to either organization under the information presented.

Because the Commission is unable to apply exception (f), it turns to its Position Statement 08-02 (Travel), in which it stated its belief that travel that is not otherwise exempted under an exception may nonetheless be permissible in certain circumstances. In that Position Statement, the Commission set forth five conditions that, when satisfied, make acceptance of travel-related expenses from a private entity a gift to the government, rather than to the individual government official, and therefore permissible.

The Commission believes that **acceptance of travel-related expenses may be considered a gift to the State or local government, rather than to the public official or employee, and therefore permissible, when five conditions are met.** These five conditions are designed to eliminate the possibility that acceptance of travel-related expenses could create a breach of the public trust. The Commission also recognizes that attendance at conferences and certain travel by public employees and officials can be beneficial to the State and local communities, can serve an important governmental purpose, and, in some situations, may in fact be part of the inherent duties of a government employee or official.

¹ The requester was informed that one individual has donated approximately 24% of The Multicultural Mosaic Foundation’s total funding through his for-profit business interest, in each year prior to 2009. Therefore, even though the source of funding for 2009 remains unclear at this time, it is probable that exception (f) would not be available.

A. May the requesting member of the Colorado General Assembly accept the travel-related expenses?

Applying the Position Statement 08-02 analysis to the request currently before the Commission, the Commission makes the following determination as to the requesting member of the Colorado General Assembly:

Condition #1 (the travel is for a legitimate State or local government purpose) is satisfied. Under the facts presented, the member of the General Assembly would be participating in this trip as a representative of Colorado state government. This appears consistent with the fact that others who have participated in similar trips hold similar level positions: Included as past participants have been religious leaders (e.g., a senior rabbi, a professor of theology, an officer of the Archdiocese of Los Angeles); leaders in academia (e.g., a university president, a university professor); and leaders in government (e.g., three Arizona state representatives, a mayor, a supreme court justice). In addition, the requester has been asked to deliver a speech to The Multicultural Mosaic Foundation prior to the trip.

The requester states her belief that this trip “serves a laudable and legitimate state purpose that helps community and faith-based leaders achieve social, cultural, and educational goals, including the following: Encouraging the identification, protection and preservation of cultural values considered to be of outstanding value to humanity; contributing to the establishment and furtherance of cross-cultural tolerance and dialogue in the community and the world at large; and working toward attaining peace and cooperation among the world civilizations.” These are legitimate goals in today’s

world. The IEC agrees that the State would benefit from the requester's participation in this trip and finds, therefore, that this travel would serve a legitimate State purpose.

Condition #2 (the travel arrangements are appropriate to that purpose) is satisfied. Each participant would pay his or her own air transportation. The itinerary before the Commission shows a busy ten day schedule of educational and cultural activities. Under the facts presented, the participants would be staying in the homes of local residents or at appropriate hotels. The one and possibly two nonprofit entities are offering to pay meals at the hotel, at restaurants, or with local families; there are no banquets identified on the itinerary. The IEC believes that the travel arrangements to be provided by these private entities are appropriate.

Condition #3 (the trip is no longer than reasonably necessary to accomplish the business which is its purpose) is satisfied. Day 1 of the itinerary is arrival in Istanbul and an afternoon city tour and dinner. The Commission believes this is appropriate given the distance and travel time to Turkey. Day 11 of the itinerary is to be a return travel day to Colorado.

The requester has told the Commission that she may extend her trip to Turkey beyond the organized trip duration. However, she has represented that she "will personally pay for all costs associated with hotel accommodations, meals, transportation (including airfare), and sightseeing expenses associated with any extended visit." The Commission believes these facts satisfy condition #3 because (a) there would not be a "gift" of travel from a private entity in the absence of a legitimate government purpose, and (b) there would not be any expense to the government.

Condition #4 (the official who will be traveling is not currently, was not in the recent past, and will not in the reasonably foreseeable future, be in a position to take direct official action with respect to the donor) is satisfied. The requester has made this representation to the Commission. In addition, membership in the General Assembly does not appear to offer an opportunity to take direct official action with respect to either donor.

Condition #5 (verification of compliance with conditions #1 through #4) is satisfied. Position Statement 08-02 offers four means by which to satisfy condition #5; any one of them is sufficient. Here, it is satisfied through an advisory opinion from the IEC (option d).

B. May the requesting member of the Colorado General Assembly accept the travel-related expenses being offered to her spouse?

Article XXIX Sec. 3(2) prohibits a member of the General Assembly, **either directly or indirectly as the beneficiary of a gift or thing of value given to such person's spouse**, from soliciting, accepting or receiving any gift worth more than \$50, without giving lawful consideration of equal or greater value in return, unless it falls under a listed exception. The requester advises that her spouse has been offered equivalent travel-related expenses from the two non-profit entities.

Because exception (f) has been found to be inapplicable here, the Commission returns to the language in Position Statement 08-02. In footnote 3, the Commission addressed travel by a spouse: "It may be appropriate in certain circumstances for a government official or employee to be accompanied by a spouse or partner on a trip that is paid for by a private entity. This arises sometimes in the case of foreign travel for

diplomatic or protocol reasons. These questions may be addressed to the IEC for fact-specific advice.”

The Commission finds that it is appropriate for the requester’s spouse to accompany her on this trip to Turkey. This is precisely the type of situation that was envisioned by the Commission when it included footnote 3 in Position Statement 08-02 in November of 2008. The Commission also notes that two of the statements provided by past participants spoke about having been accompanied by spouses, so this extended invitation does not appear to have been offered solely to the requesting member of the Colorado General Assembly.

C. Clarification of Position Statement 08-02 with regard to Condition #5

The Commission takes this opportunity to clarify the requirements of condition #5. This condition requires that the government official or employee verify compliance with conditions #1 through #4. This condition may be satisfied by any one of four means; only one is required. In means (a) and (b), the Commission gives broad latitude to the particular agency or body of which the individual is a member to establish its own procedures. In this case, it is up to the leadership of the General Assembly to determine how to exercise this function and give its “official public approval.” In means (c), the official or employee must prepare a written explanation of why he or she believes the travel meets conditions #1 through #4. This is a personal written statement by the official or employee that does not need to be turned in to anyone. It may be subject to the Colorado Open Records Act but the IEC lacks the jurisdiction to make this determination. The fourth means, obtaining an advisory opinion from this Commission, is the one that has been satisfied here.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for a member of the Colorado General Assembly, and her spouse, to accept travel-related expenses to Turkey under the facts presented here. This would be a gift to the State of Colorado, rather than to the individual government official, pursuant to the conditions set forth in Position Statement 08-02 (Travel).

The Independent Ethics Commission

Matt Smith, Chairperson
Roy Wood, Vice Chairperson
Nancy E. Friedman, Commissioner
Sally H. Hopper, Commissioner
Larry R. Lasha, Commissioner

Dated: April 16, 2009