

State of Colorado



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Advisory Opinion No. 09-05 (Acceptance of a Fellowship from a Nonprofit Entity)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for a government employee to accept a fellowship from a nonprofit entity to attend a leadership course offered by the John F. Kennedy School of Government at Harvard University, under the circumstances described by the requester.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for advisory opinion, asking whether a senior government employee may accept a fellowship to attend the Senior Executives in State and Local Government Program (“Program”) offered by the John F. Kennedy School of Government at Harvard University (“Kennedy School”). The total cost of the Program, including tuition, housing, most meals, and materials is \$11,200, \$10,200 of which would be paid by the Gates Family Foundation (“Gates”), a nonprofit entity. The employee’s agency would pay \$1000, plus air transportation.

II. JURISDICTION

The IEC finds that an employee of a state agency is a government employee subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(1).

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, 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 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."

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.

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

The requesting government employee has been offered a fellowship to attend the Kennedy School's three week leadership program. Tuition and travel expenses for the requester, except for air transportation, would mostly be paid by Gates, a nonprofit entity. Additional costs, including airfare, would be paid by the government employee's agency. According to the requester, "[s]ince 1980, the Kennedy School and the Foundation (Gates) have collaborated to send up to five individuals to the Program each year. Past recipients have included state legislators from both parties, employees of the Governor's office, and members of the Governor's cabinet." In order to receive this fellowship, interested persons apply to the Gates Foundation. The applications are reviewed by a committee consisting of representatives of Gates and the Kennedy School. The final decision on acceptance is made by the Kennedy School.

The requester states that "[t]he Program provides the opportunity for participants to: 1) develop new conceptual frameworks for addressing program and policy issues, 2) explore the relationship between citizens and their government, 3) examine the ethical and professional responsibilities of leadership, and 4) exchange ideas with experienced faculty as well as an extremely diverse group of participants."

Exception (f):

Under Article XXIX, a government employee may not accept a gift, or other thing of value worth more than \$50 in any calendar year, unless it falls under an enumerated exception. Exception (f) exempts:

[r]easonable 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.

Applying exception (f) to the request currently before the Commission, the Commission makes the following determinations:

1. “Reasonable Expenses”

The request does not contain any information pertaining to the breakdown of expenses for the trip. However, the Commission believes that the overall cost of this Program, given that it covers lodging, meals, tuition, and materials for three weeks, is not excessive. Therefore, the requirement that the expenses be reasonable appears to be satisfied.

2. Purpose of Attendance

In order to decide whether exception (f) applies, the Commission must determine whether the recipient of the fellowship is attending “a convention, fact-finding mission or trip, or other meeting” and if he is representing the State. (Exception (e) is inapplicable because there is no information before the Commission that the government employee would be scheduled to speak or answer questions as part of a scheduled program.)

The Commission determines that “trip or other meeting” may be interpreted to cover this

type of Program. That the employee's state agency would pay for a portion of the cost of the trip is further evidence that he would be "representing the state" at this Program.

3. Nonprofit Entity

The final criterion that must be met under exception (f) is that the donor of the gift must qualify as a nonprofit entity that receives less than 5% of its funding from for-profit entities or organizations. The Gates Family Foundation is a tax exempt nonprofit under section 501(c)(3) of the Internal Revenue Code. The requester states that the Foundation does not receive any contributions from businesses. Gates' Executive Director has confirmed that Gates is funded entirely from its own endowment, and does not accept contributions from for-profit sources. The Commission therefore believes that this request falls squarely under exception (f), and acceptance of the fellowship would be permissible.¹

Finally, the Commission believes that there is no inherent or potential conflict of interest or appearance of impropriety in this instance. The Commission has been informed that Gates does not employ or contract with lobbyists, and there is no indication that the fellowship was offered to solicit the goodwill of the government employee or to influence an official act.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for a government employee to accept a fellowship to attend this type of program, expenses of which

¹ The Commission notes that acceptance of this fellowship may be permissible under other analyses as well. This fellowship could be deemed analogous to a scholarship, in that the recipient was selected in a competitive process, using objective criteria. The fellowship could also be viewed as a prize, and there is no evidence here that the fellowship was awarded to influence a particular official decision. See Position Statement 08-01, pages 6, 8.

would be paid mostly by a nonprofit entity that receives less than 5% of its funding from for-profit sources.

The Independent Ethics Commission

Matt Smith, Chairperson
Roy Wood, Vice Chairperson
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Sally H. Hopper, Commissioner
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