

State of Colorado



INDEPENDENT ETHICS COMMISSION

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Advisory Opinion 09-09 (Free Admission to Events by Public Employees Accompanying the Governor)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for members of the Governor's cabinet and his staff to accept free admission to events with an admission price in excess of \$50, when they are attending such events with the Governor as part of their official duties so long as certain criteria are met.

I. BACKGROUND

The Independent Ethics Commission ("IEC" or "Commission") has received a request for advisory opinion by the Governor¹, asking whether members of the cabinet and members of his staff may accept free admission to events with a ticketed price in excess of \$50, when they are attending such events to provide staff support to the Governor. In Advisory Opinion 09-03, the Commission considered a similar issue and decided that State Patrol officers may accept free admission and meals when providing security to the Governor or Lieutenant Governor or members of their families at events.

II. JURISDICTION

The IEC finds that members of the Governor's staff are "government employees" and members of the cabinet are "public officers" subject to the jurisdiction of the

¹ The Governor has waived confidentiality relating to this request.

Commission. CO Const. Art. XXIX (2)(1),(6).

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.

In Advisory Opinion 09-03, the Commission considered the issue of whether State Patrol Officers may accept free admission to events when they are accompanying the Governor, Lieutenant Governor, the Governor-elect, or members of their families as part of a security detail. The Commission noted in that opinion that C.R.S. §24-33.5-216 specifically requires that the Governor of the State of Colorado be provided with a security detail for his and his immediate family's protection, and that a security detail is also provided for the Lieutenant Governor (at the discretion of the Governor), and for any governor-elect. The situation described in this request is slightly different. The Governor's request is not made for safety reasons, but rather to assist the Governor in the performance of his official duties.

In Position Statement 08-02 (Travel), the Commission recognized that travel that is not expressly exempted from Article XXIX Section 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. The Commission

believes that under certain circumstances, the attendance by these public employees and officials may be considered a gift to the state.

IV. DISCUSSION

In this request, the Governor states that the participation of these individuals is a benefit “to the State of Colorado and not to the individual employee, because their attendance clearly enhances the quality of the Governor’s participation.” The Commission therefore analyzed this request in light of the criteria set forth in Position Statement 08-02 (Travel) in deciding whether a gift may be considered a gift to the State:

Condition #1: The gift is for a legitimate State or local government purpose.

The Commission believes that if the Governor is speaking at an event, and the public employee’s or public officer’s area of expertise is such that his or her attendance would assist the Governor, then that staff or cabinet member’s attendance may be appropriately classified as for a legitimate state purpose.

Condition #2: The arrangements are appropriate to that purpose.

As stated in Position Statement 08-02, the travel arrangements must be appropriate to the purpose of the event. The staff or cabinet member attending the event with the Governor must have the same accommodations and meals as the other participants to the event. As stated above, the event must be closely tied to the staff or cabinet member’s area of expertise such that his or her participation would be of benefit to the Governor and the state.

Condition #3: The event is no longer than reasonably necessary to accomplish the business which is its purpose.

If the staff or cabinet member is attending the event to assist the Governor, then he or she may not remain at the event for an extended period of time beyond the time reasonably necessary to assist the Governor. For example, if the Governor is speaking at a luncheon, then the staff member may not receive free admission to a three-day conference, but rather only for that portion of the event at which he or she is providing staff support to the Governor.

Condition #4: The government official or employee who will be attending 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.

A public official or employee who has been in the past, or will in the foreseeable future be in a position to take direct official action with respect to the donor, may not accept a free gift, regardless of the potential benefit to the Governor. The Commission believes that this condition goes to the heart of preserving public confidence in government. The inclusion of this criterion is to avoid any perception that that individual is being rewarded for a previous official act or decision or to influence a future official act.

Condition #5: Government officials and employees are required to verify compliance with conditions #1 through #4 above. This condition would be satisfied by a statement by the Governor as to why this person's attendance would be beneficial.

If these five criteria are met then the free admission could properly be termed as a gift to the state, not the individual staff or cabinet member. The Commission notes, however, that this Advisory Opinion does not mean that the Governor may request free admission for a large number of staff to attend a particular event. Only those cabinet and staff members whose presence is reasonably necessary to assist the Governor may accept free admission and/or meals at an event. Moreover, the acceptance of free admission and/or meals is only permissible at events at which the Governor is speaking on a policy issue, not at events at which the Governor has only a ceremonial or minor role.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for members of the Governor's cabinet and members of his staff to accept free admission to events when they are accompanying the Governor to speaking engagements with an admission price in excess of \$50, when they are attending such events with any of those officials as part of their official duties. The Commission believes that such free admission may be a gift to the State of Colorado, rather than to the individual public official or employee under the circumstances described in this Opinion.

The Independent Ethics Commission

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Larry R. Lasha, Commissioner*

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