

State of Colorado



Matt Smith, *Chairperson*
Dan Grossman, *Vice-Chairperson*
Sally H. Hopper, *Commissioner*
Larry R. Lasha, *Commissioner*
Roy V. Wood, *Commissioner*

Jane T. Feldman, *Executive Director*
Doug Platt, *Communication Director*

INDEPENDENT ETHICS COMMISSION
101 West Colfax Avenue, Ste 500, Denver, CO 80203
Ph.: 303/837-2339
Fax: 303/837-2344
E-mail: jane.feldman@state.co.us
doug.platt@state.co.us
www.colorado.gov/ethicscommission

Advisory Opinion 10-07

(Organization and Funding of Colorado Legislative Women's Caucus)

SUMMARY:

It would not be a violation of Article XXIX of the Colorado Constitution for members of the Colorado Legislative Women's Caucus to form a nonprofit organization or partner with another nonprofit to accept private donations under the circumstances described in the request, subject to the conditions described in this opinion.

I. BACKGROUND:

The Colorado Independent Ethics Commission (IEC or Commission) has received a request from members of the Colorado General Assembly on behalf of the Colorado Legislative Women's Caucus (Caucus) asking whether the Caucus may form a nonprofit or partner with an existing nonprofit to solicit and accept private donations that would be used to defray Caucus expenses. The funds would be used to pay for staff, meals, facility rentals, speakers, and other associated costs of the Caucus.

According to the request, the Caucus is a bipartisan, bicameral organization that was reinvigorated during the 2009 legislative session. The goals of the Caucus include organizing events that would bring together past and current women legislators, preparing and preserving a history of women in the General Assembly, and sponsoring events that may inspire other women to pursue a career in politics. In order to achieve

these goals, the Caucus proposes forming a nonprofit organization, or partnering with an existing organization to raise the necessary funds to achieve these goals. The total amount to be raised is approximately \$8400 per year. Specifically, the request poses two questions:

1. *May the Colorado Legislative Women's Caucus partner with a section 501(c)(3) nonprofit foundation incorporated by Metropolitan State College of Denver in order to accept donations on behalf of the Caucus and either pay directly or reimburse the Caucus for expenses incurred in connection with the Caucus' goals and purposes as identified in this request?*

2. *In the alternative, may the Colorado Legislative Women's Caucus incorporate itself as a nonprofit in order to pay its expenses in connection with the goals and purposes as identifies in this request?*

II. JURISDICTION:

The IEC finds that members of the General Assembly are subject to the jurisdiction of the Commission. CO Const. Art. XXIX (3)(1)

III. APPLICABLE LAW:

Section 3 of Article XXIX 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.

IV. DISCUSSION:

Section 3 prohibits a member of the General Assembly from soliciting, accepting or receiving any gift or other thing of value worth more than \$50 in any calendar year, from a person, either directly or indirectly without that person receiving lawful consideration of equal or greater value in return, unless it falls under an exception. The Commission interprets this section as prohibiting the solicitation, acceptance or receipt of a gift by the covered person or a member of their immediate family and which would benefit the person who solicits, accepts and/or receives the gift. This prohibition does not extend to an organization that the member supports. A public official therefore generally could solicit donations to private charities or other organizations in which they may be involved. This does not mean, however, that members of the Caucus can do something through their association that they are not permitted to do as individuals under Article XXIX. The members of the Caucus should be careful, moreover, to avoid an appearance of impropriety in their solicitations for the Caucus or for any other organization in which they may be involved. As stated by the Commission in Advisory Opinion 09-06 (Service on the Board of a Nonprofit), at page 8,

Appearances of impropriety are generally referred to as perception issues or violating the smell test. They can weaken public confidence in government and create a perception of dishonesty, even among government officials who are in technical compliance with the law. Such conduct has the potential to damage an official's reputation just as much as illegal conduct.

The request also states that members of the Caucus will not solicit or accept contributions from professional lobbyists. The Commission has previously stated that the bar from receiving any gift from a lobbyist applies to the professional lobbyist, but

not to the organization that the lobbyist represents. See, Position Statement 09-01, pages 5-6. As noted in that Opinion, however, there may be fact-specific situations in which it is inappropriate for the organization to give a gift to a public official or employee as well. Id. The Commission reminds lobbyists that they cannot give money to the Caucus.

The Commission notes that professional and volunteer lobbyists are prohibited from making or promising to make a campaign contribution to a member of the General Assembly while that body is in session. See, C.R.S. §1-45-105.5 (1)(a). The Commission finds that to avoid an appearance of impropriety the members of the Caucus should also refrain from soliciting contributions from any organization or individual which is either actively supporting proposed legislation or for whom the Caucus members are in a position to take direct official action while the General Assembly is in session. The Commission notes that the Colorado Senate Rule 41(f) also prohibits Senators from seeking donations to charitable organizations from professional lobbyists and employees of the General Assembly.¹ There is no timing limitation included in that Rule.² The Colorado House of Representatives has a similar Rule. House Rule 39(c).

The Commission believes that the appearance of impropriety concerns exist regardless of whether the Caucus partners with another nonprofit or creates its own.

¹ Legislators not to request donations to charitable organizations. A legislator shall not request a lobbyist or an employee of the General Assembly to make donations to any type of charitable organization.+

² Members of the General Assembly are, however, permitted to serve as non-paying members of the board of non profit organizations. See, Ethics Advisory Opinion 2006-02. Nor does the (Ethics) Board necessarily view such participation as a threat to the public's trust and confidence in the integrity of the legislative process. Serving on the board of a non-profit organization without pay should not, in itself, create a conflict of interest for a legislator voting on a bill or measure that may affect that organization.+

There is some additional concern by the Commission that permitting individual members or groups of members of the General Assembly to create a section 501(c)(3) organization in order to solicit funds could be abused and used as a means to get around Article XXIX and campaign finance laws.

V. CONCLUSION:

The Commission finds that there is no violation of Article XXIX if the Caucus forms a non profit organization or partners with another nonprofit, but cautions the members of the Caucus that they should be careful to avoid an appearance of impropriety in the solicitation of funds. The Commission further warns that the limitations of solicitation contained in Article XXIX still apply to regulated officials. These covered officials cannot through an association solicit funds to benefit themselves directly or their families indirectly simply to avoid the application of Article XXIX. No matter how worthy the venture may appear from its stated purposes, the Commission cannot condone actions in violation of Article XXIX because the actions are conducted through an association rather than in person. Such a rule would quickly render Article XXIX ineffective.

The Independent Ethics Commission

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