

State of Colorado



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Advisory Opinion No. 10-14

(Acceptance of a Luncheon from a Political Subdivision)

SUMMARY: Members of the General Assembly who are speaking at a luncheon may accept admission to the event from a political subdivision of the State of Colorado under the circumstances described in this opinion. Other members of the General Assembly who are not featured speakers may not solicit or receive this gift.

I. BACKGROUND

The Independent Ethics Commission (~~%EC+~~or ~~%C~~ommission~~+~~) has received a request for advisory opinion, asking whether members of the General Assembly may accept admission to a fundraising luncheon to benefit the Colorado Channel Authority (~~%Authority+~~), a ~~%body~~ corporate and political subdivision~~+~~of the State of Colorado pursuant to C.R.S. § 24-49.9-101(2).¹

The Board of Directors of the Authority, by statute, is appointed by public officials as follows: by the Governor with the consent of the Senate (three members), and one each by the Chief Justice, the Speaker of the House of Representatives, the minority leader of the House of Representatives, the President of the Senate, the minority leader of the State Senate, and one member is chosen jointly by the President of the Senate and the Speaker of the House. According to the request, four members of the General

¹ The Channel Authority has waived confidentiality regarding this request.

Assembly currently serve on the Board of Directors. The Authority receives state funds that are used to contract with a nonprofit to provide accounting and other functions including the videotaping of sessions of the General Assembly. The videotapes are provided to the public via cable television and are available in real time on the General Assembly's web site. The Authority therefore assists the General Assembly in providing greater public access to the workings of the General Assembly. The Authority also receives staff support from employees of the Colorado General Assembly, although the legislation permits the hiring of staff. No staff has been hired due to budget constraints. The Authority also receives gifts and donations from corporate sponsors.

The Authority is requesting whether, consistent with Article XXIX, the Authority could provide complimentary admission to a luncheon to all 100 members of the Colorado General Assembly. According to the request:

- The price of admission for non-legislators would be \$100 per person.
- The actual cost of the luncheon for the Authority would be approximately \$30 per person.
- Newly elected leadership of the General Assembly would be invited to speak as part of the scheduled program.
- Other members of the General Assembly would be invited and seated at various tables around the room.
- Members-elect (i.e., individuals elected, but not yet officially sworn in as members of the General Assembly) also would be offered free admission and seated at various tables around the room.
- The Authority is also soliciting corporate sponsors to underwrite the event.

- Professional lobbyists will not be solicited for sponsorship or donations, but will be invited to purchase tickets to the luncheon.
- The luncheon is currently planned for November 4, 2010, two days after Election Day.

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) and(2).²

III. APPLICABLE LAW

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:

e) Admission to, and the cost of food or beverages consumed at, a reception, meal or meeting by an organization **before whom the recipient appears to speak or to answer questions as part of a scheduled program.**

(f) Reasonable expenses paid by a nonprofit organization or **other state or local government** 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**

² Newly elected members of the General Assembly, unless they are otherwise under the jurisdiction of the IEC as government officials or employees, are not under the Commission's jurisdiction until they are sworn in.

local government, provided that the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities. (Emphasis supplied)

IV. DISCUSSION

A. Value of the Gift:

Section 3(2) of Article XXIX prohibits covered individuals from accepting gifts in excess of \$50 in any calendar year, unless it falls under a listed exception. The requestor suggests that the value of the gift involved is \$30, the approximate cost of the actual meal, and that the lunch is therefore out of the purview of Article XXIX. The Commission disagrees. The Commission finds that the gift consists of the admission to the event, which is \$100. The gift is therefore above the \$50 threshold, and is barred unless it falls under a listed exception. Moreover, the Commission finds that the gift of the admission to the individual legislators inures to the benefit of such individuals and is therefore, a gift to the legislators rather than a gift to the state.

B. Members of the General Assembly who are speaking:

The requestor states, and the Commission agrees, that members of the General Assembly who appear ~~to~~ speak or to answer questions as part of the scheduled program may accept the cost of the food and beverages under Article XXIX section 3(3)(e). Under this Section, individuals must be featured as speakers or presenters in agendas, calendars and other promotional materials.³ Assuming that members of the General Assembly in leadership positions are listed as speakers on the scheduled program, then their acceptance of admission to the luncheon would be permissible.

³ As the Commission stated in Letter Ruling 09-06 (Participation on a Tour by Members of the General Assembly) at page 4, individuals who are merely ~~asked~~ to say a couple of words do not fall under this section.

C. Members of the General Assembly who are not speaking:

It would be a violation of Article XXIX for members of the General Assembly who are not on the scheduled program to accept this gift unless it falls under another enumerated exception. The requestor asserts that because the Authority is a ~~body corporate~~ and ~~political subdivision~~ created by an act of the General Assembly and signed by the Governor, it qualifies as a ~~state~~ or local government pursuant to Article XXIX section 3 (3)(f). There is no information in the legislative history of Article XXIX regarding the meaning of the phrase ~~state~~ or local government. The Commission previously rejected suggestions that the phrase could include a foreign government (See, Advisory Opinion 10-11 (Acceptance of Travel Expenses from a Foreign Government), or that the phrase could mean ~~joint governmental agencies~~ to which the State belongs (See, Position Statement 10-01 (Conferences and Travel Paid For by a State or Local Government or Nonprofit). The Authority was formed as a political subdivision of the state, receives state funds to operate, and is subject to the Colorado Sunshine Law, C.R.S. § 24-6-401 *et seq.* as well as the Colorado Open Records Act, C.R.S. § 24-72-101 *et seq.* See, C.R.S. § 24-49.9-101 *et seq.* The Authority also receives funds and in kind contributions from other sources. The Commission finds, however, that the Authority does not qualify as a state or local government under Article XXIX.

D. Invitations to Professional Lobbyists and Corporations:

The Commission is also troubled by some of the information provided in the request and on the Authority's web site relating to the sending of invitations.

The Authority hopes to raise \$100,000 through this luncheon and through additional donations. Although representatives of the Authority state that they will not solicit donations from professional lobbyists, they do plan to invite professional lobbyists, and encourage them to attend. The members of the Board of Directors of the Authority will also directly solicit the principals of some professional lobbyists to underwrite the cost of the event with corporate donations. According to information before the Commission, some of these invitations, as well as invitations to corporate donors, will be made personally by individual members of the Authority's Board of Directors, which include four current members of the General Assembly. The Commission does not believe that there is a substantive distinction between a personal invitation to a fund raising event, and soliciting a donation. These solicitations would be in violation of Article XXIX Section 3. The Commission also is concerned about the suggestion that non-leadership legislators will be seated at various tables around the room. In its invitation, the Authority must be careful not to give the impression that the price of the ticket guarantees access to a member of the General Assembly.

Moreover, the Commission questions who would be paying for the legislators' admission to the luncheon. Presumably, some of that money would be coming from the difference between the cost of the admission and the value of the meal. Some of those \$70 contributions will be coming from professional lobbyists who are not permitted to give any gift of any kind to a public employee or official, including a member of the General Assembly. The Commission

previously has found in Position Statement 09-01 (Gifts from Lobbyists), at page 6, that gifts from a lobbyist to a group composed of public employees would be deemed as gifts to the individual, and therefore barred. The Authority therefore needs to be mindful of that issue.

E. Appearance of Impropriety/Conflicts of Interest:

As discussed above, these invitations from members of the General Assembly to corporate donors may be a violation of the gift ban provisions in sections 3 and 4 of Article XXIX. These actions also could be perceived as creating ~~an~~ justifiable impression among members of the public that such (public) trust is being violated.+ Article XXIX, Section 1(1)(d). The Commission finds that the appearance that access to members of the General Assembly is available for \$100 goes to the heart of the concerns that gave rise to the passage of Article XXIX. The Commission is concerned that the manner of the invitation to this event is more than ~~an~~ appearance of impropriety.+ The Commission therefore encourages the Authority to exercise particular caution in extending invitations to anyone who might have an interest in matters pending before the General Assembly.⁴

The Commission has endeavored to give guidance to those serving under Article XXIX in how they can meet and avoid the appearance of impropriety when they share meals with those who share an interest in legislative activity and those

⁴ The Commission agrees that the idea of the public broadcast of government's activities is a laudable goal that should be pursued on behalf of government. The Commission notes, however, that one of the Authority's primary corporate sponsors is a cable television provider. Contracts that may be entered into to provide a public broadcast should not enable a trade off from those entities of government that ultimately regulate or issue franchise privileges, or grant rights of way. Members of the General Assembly also may be in a position to take direct official action with respect to companies in the consumer protection and other oversight arenas. Such practices may constitute an actual conflict of interest, not just an appearance of impropriety.

who are directly regulated. The request before the Commission today asks how the entire General Assembly can meet with contributors to the Channel Authority, which broadcasts legislative activity, to celebrate the election of legislative leadership as a fundraising activity for the Channel Authority. It should not be assumed that because the Channel Authority was created as an act of the legislature that elected officials may let their guard down and avoid the appearance of impropriety in their public actions.

Shortfalls in revenue do not excuse the application of Article XXIX nor the confidence the public deserves in the actions of government. As stated in Article XXIX section 1(2),

The people of the State of Colorado also find and declare that there are certain costs associated with holding public office and that to ensure the integrity of the office such costs of a reasonable and necessary nature should be born (sic) by the state or local government.

Efforts to create joint governmental and private enterprises to conduct governmental activities can create inherent conflicts of interest and create an appearance of favoritism towards particular private enterprises. When the government shifts the cost of conducting governmental affairs to private sources, it also becomes difficult, if not impossible, to track the actions and financing of these activities to the same open standards that are expected of government.

F. Non-governmental Solicitation:

This request for advice follows on the heels of a similar request in Advisory Opinion 10-07. In that case, the Commission opined that, “[a] public official therefore generally could solicit donations to private charities or other organizations in which they

may be involved such as a nonprofit which supports the Caucus.+ But the Commission immediately warned against:

1. Soliciting or accepting gifts from professional lobbyists.
2. Creating a situation in which it is also improper to solicit gifts from the entity that employs the lobbyist.
3. Soliciting of those supporting legislation that is before the General Assembly.
4. Individuals covered by Article XXIX could not ultimately be the beneficiary of the gift.

The Commission therefore issued a strong caution about possible abuse or the appearance of abuse of the use of nonprofit organizations as mechanism for fundraising by legislators or public employees.

This opinion, Advisory Opinion 10-14, extends that concern to the use of quasi-governmental bodies and the Commission enumerates concerns about:

1. The solicitation of professional lobbyists and corporations.
2. Personal solicitation of ticket purchases by members of the Assembly.
3. Seating legislators at various tables around the room to assure that they will sit with those who bought tickets.
4. Creating the appearance of a climate in which interested parties donate to the Authority in exchange for support of legislation.

Both of these requests for advice are written in the context of difficult financial times against the background of a long standing practice of fundraising through non-profit or other organizations by soliciting substantial donations from the private sector in return for socializing, celebrating, and inaugurating new projects or new years. The

Commission urges that Advisory Opinions 10-07 and 10-14 be read as allowing non-governmental support of governmental activities but with the clear understanding that such support may carry the actuality or the appearance of impropriety as put forth in Article XXIX.

V. CONCLUSION

It would not be a violation of Article XXIX for members of the General Assembly who are speaking as part of the scheduled program to accept admission to the luncheon from the Colorado Channel Authority. It would be a violation of Colorado Constitution Art. XXIX for the members who are not speaking to accept this gift, under the circumstances described in this Opinion.

The Independent Ethics Commission

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