

State of Colorado



INDEPENDENT ETHICS COMMISSION

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Advisory Opinion 11-05

(Acceptance of Travel Expenses and Written Materials from a Nonprofit Organization)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for employees of the Department of Labor, Division of Oil and Public Safety to accept travel expenses and written materials from the National Board of Boiler and Pressure Vessel Inspectors (“National Board”) under the circumstances described in the request.

I. BACKGROUND

The Department of Labor, Division of Oil and Public Safety (“Division”) has submitted a request to the Independent Ethics Commission (“IEC” or “Commission”) asking whether the Division may accept travel expenses from the National Board, as well as complimentary copies of the National Board Inspection Code (“NBIC”) and two complete sets of the American Society of Mechanical Engineers (“AFSME”) Boiler and Pressure Vessel Code Books.

According to the request, the National Board is a nonprofit, founded in 1919 “to promote greater safety to life and property through uniformity in the construction, installation, repair, maintenance, and inspection of pressure equipment. The principal document published by the National Board is the NBIC which has been adopted by all of the member jurisdictions as well as some federal regulatory agencies such as the

United States Department of Transportation. It is the only standard recognized worldwide for in-service inspection repairs and alteration of pressure vessels. The National Board is the guiding organization when it comes to boiler and pressure vessel safety and is a recognized world leader in the installation, operation, inspection, repair and alteration of pressure equipment.”

The National Board is comprised of 63 member jurisdictions, including Colorado. The Chief Boiler Inspector of Colorado, an employee of the Division, sits on the National Board. Colorado does not pay a membership fee, but does pay a “commission renewal fee” of \$40 per commissioned inspector for a total of \$320 per year. In return, Colorado may send two trainees per year to the National Board Exam prep training. The course would normally cost \$3000 per session. The National Board also pays all travel and expenses. The Division also receives 8 copies of the NBIC (one per commissioned inspector), at a value of \$150 per book, and two complete sets of the ASME Boiler and Pressure Vessel Code Books. These are valued at \$15,000 each. The National Board also conducts two annual conferences referenced to in the request as “general meetings” at no cost to Colorado. All travel expenses for the Board member are provided by the National Board.¹

According to the Executive Director of the National Board, all of its funding comes from data report registrations, shop reviews and surveys, the sale of code books and reference materials, accreditation and training programs, and testing and certification fees. The Board does not receive any funding or contributions from any government or industry

¹ The National Board would pay for the Board member’s spouse as well, but the Division does not permit the spouse to attend.

II. JURISDICTION

The IEC finds that employees of the Department of Labor are government employees 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 three dollars (\$53)² 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 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 local government, provided that the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities.

IV. DISCUSSION

A. Travel Expenses

Section 3 (3)(f) provides that covered individuals may accept travel expenses for a "convention, fact finding mission or trip" provided that the funding is from a state or local government or a nonprofit which receives less than 5% of its funding from a for profit

² Per Article XXIX, section 3(6) the gift limit has been raised from \$50 to \$53 effective April 8, 2011. See, Position Statement 11-01.

entity. The Chief Boiler Inspector, who sits on the National Board as the representative of the State of Colorado, attends the general meetings. He is therefore attending a conference representing state government. For the test prep conferences, it is the Division who selects the representative, and the trainees would also be representing the state. According to information before the Commission, the National Board does not receive direct donations from for profit entities. Almost all of the National Board's income comes from the sale of its products and services. The Commission finds that the sale of goods and services for valid consideration should not be considered in assessing the funding of a nonprofit. Under these circumstances, the Commission finds that acceptance of travel expenses is permissible.

B. Acceptance of Code Books

The National Board provides copies of Code Books to the Boiler Inspection program within the Division in return for Colorado's participation on the National Board. These Code Books are valued at a total of \$42,000. The Commission finds that these Code Books, used by the Boiler Inspection Program ("Program") in order to perform the required duties as state employees, are not prohibited gifts under Article XXIX. The Code Books are required manuals. When a Program employee leaves state employment or moves to another job within state government, the Code Books remains with the Program. Therefore, these are not gifts to the covered individuals personally.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for employees of the Colorado Department of Labor, Division of Oil and Public Safety to accept travel expenses and written materials under the circumstances presented in this request.

The Independent Ethics Commission

*Matt Smith, Chairperson,
Dan Grossman, Vice Chairperson
Sally H. Hopper, Commissioner
Larry R. Lasha, Commissioner (Did not participate)
Roy Wood, Commissioner (Did not participate)*

Dated: April 21, 2011