

State of Colorado



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INDEPENDENT ETHICS COMMISSION

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Advisory Opinion 10-05

(Public Service Announcement by a State-Wide Elected Official)

SUMMARY: It would be permissible under Colorado Constitution Art. XXIX for the Attorney General of the State of Colorado to participate in a public service announcement paid for by a nonprofit under the facts described in the request.¹

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for advisory opinion by the Attorney General asking whether his participation in a public service announcement to be aired on television would be prohibited under the “gift ban” provisions of Article XXIX section 3. According to information before the Commission, the Attorney General has taped a public service announcement on the subject of responsible use of alcohol. The air time for the announcement would be paid for by the Century Council, a nonprofit organization funded by leading distillers, and “dedicated to developing and implementing programs that fight drunk driving and underage drinking.”

The Attorney General has not and will not receive any compensation for his time or for the use of his image or likeness. The taping was done in Washington while the

¹ The Attorney General has waived confidentiality relating to this request.

Attorney General was there on official business. The Attorney General appears on the announcement with Olympic swimmer Dara Torres.

II. JURISDICTION

The IEC finds that the Attorney General is a “public officer” subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(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.

IV. DISCUSSION

The Attorney General contends that the airing of a public service announcement is not a gift under Article XXIX because there is valid consideration for whatever benefit he receives from the publicity of the announcement. As the basis for this contention, he cites the fact that he spent time during the taping, as well as his name, his likeness and his prestige. The Commission agrees. Moreover, the Commission believes that there are certain public service responsibilities associated with being an elected official, and that certain elected officials, including the Attorney General, have a responsibility to use their personal credibility and the position of their office to better educate the public on issues relating to their government position. The Commission notes that other officials

have participated in public service announcements related to the importance of voting, filling out the census form, unclaimed property, etc. The Commission believes that these announcements are part of the official's public duties, and do not fall under Article XXIX in these circumstances.² The Attorney General is the chief law enforcement authority in the State, and therefore has an interest in discouraging the illegal use of alcohol. ³

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for Attorney General John Suthers to participate in a public service announcement under the circumstances presented in the request. The Commission makes no determination as to whether or not the purchase of airtime constitutes a campaign contribution pursuant to the Fair Campaign Practices Act, C.R.S §1-45-101 *et seq.* .

The Independent Ethics Commission

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

Dated: April 19, 2010

² Other states, including New York, Montana, and Pennsylvania have restrictions on elected officials making public service announcements when they are running for re-election, and the announcements are timed to be shown within a set time period before the election. Colorado does not have similar statutory provisions. See, e.g. NY Public Officer's Law §73(b) and Montana's §2-2-121(4).

³ The Commission believes that this is a very different situation from the one described in *Coffman, Colorado State Treasurer v. Common Cause*, 102 P.3d 999(Co. 2004). In that case, the Court found that it was not permissible for the State Treasurer to use public funds in excess of \$50 to advocate against a ballot initiative.