

**OFFICE OF LEGISLATIVE LEGAL SERVICES
COLORADO GENERAL ASSEMBLY**

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FAX MACHINE COVER SHEET

February 14, 2011

To: Doug Platt & Jane Feldman, Independent Ethics Commn.

Fax Number: (303) 837-2344

From: Jennifer Gilroy

Re: Request for Advisory Opinion: Rep. Janak Joshi

Number of pages, including this page: 8

COMMENTS:

Dear Doug and Jane:

Attached to this cover you will please find Representative Janak Joshi's request for an advisory opinion from the Independent Ethics Commission. I am also emailing this request to you today; however, the attached letter has an electronic signature which turns out oddly when scanned. I apologize for that. Thank you for your assistance in bringing this matter before the commissioners on the 23rd.

Respectfully,
Jennifer Gilroy
ph. (303) 866-4327

The information contained in or attached to this FAX message is intended only for the CONFIDENTIAL use of the individual(s) named above. If you are not the named recipient or an agent responsible for delivering it to the named recipient, you are hereby notified that you have received this document in error and that review, dissemination, or copying of this communication is prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original documents to us by mail. Thank you.

State Representative
JANAK JOSHI
Colorado State Capitol
200 E. Colfax Avenue, Room 271
Denver, CO 80203
Capitol: 303-866-2937
E-mail: janak.joshi.house@state.co.us



Member:
Education Committee
Finance Committee
Health & Environment Committee

COLORADO
HOUSE OF REPRESENTATIVES
STATE CAPITOL
DENVER
80203

February 14, 2011

*Via Facsimile: (303) 837-2344
and electronic transmission*

Independent Ethics Commission
101 West Colfax Avenue, Suite 500
Denver, CO 80203

RE: Request for Advisory Opinion regarding permissibility of a legislator's acceptance of reasonable expenses to attend an out-of-state awards banquet sponsored by a nonprofit organization

Dear Members of the Independent Ethics Commission:

I am respectfully requesting an advisory opinion pursuant to Article XXIX, section 5 (5) of the Colorado Constitution, section 24-18.5-101 (4) (b), Colorado Revised Statutes, and Rule 5 of the Rules of Procedure of the Independent Ethics Commission ("IEC"). The question involves the permissibility of my acceptance of airfare, hotel accommodations, local transportation, and a meal associated with attending an out-of-state awards banquet from a nonprofit organization. In addition, it is my expectation that I will be conferred an award of appreciation in the form of a plaque at the banquet. The event is scheduled for April 16, 2011, and is being sponsored by the Indian American Friendship Council, a nonprofit, non-religious, and nonpartisan organization. The banquet, the expenses for attending the banquet, and the award would be paid for by the organization. The following are facts and interpretations by the Independent Ethics Commission that may be relevant to this request:

1. On or about February 4, 2011, the Texas State Coordinator of the Indian American Friendship Council (IAFC), Prasad Thotakura, extended an invitation to me on behalf of the IAFC to attend an awards banquet in Dallas, Texas on April 16, 2011.¹ The letter of invitation indicated that I would be conferred the "Pride of India" award at the banquet. I have been asked to deliver remarks at the banquet regarding my experiences as a member of the Colorado House of Representatives.

2. The Indian American Friendship Council is a 501(c)(3) nonprofit, non-religious, and nonpartisan organization that provides and promotes political education and a common platform to exchange views with local, national, and international policymakers. Its stated mission is as follows: To create political awareness among Indian Americans; to maintain an ongoing dialogue with local, national, and international policymakers; to educate, encourage, and involve Asian-Indian Americans with voter registration, volunteerism, community service, and youth leadership training; to improve the ties between the United States and India; to protect the interests of the Indian-American community, to promote global democracy; and to support developing countries.

3. Although the arrangements have not yet been made, it is anticipated that the value of the round-trip airfare will be approximately \$300 and the value of the local transportation to and from the airport and hotel will be approximately \$40. I estimate that the value of the overnight accommodation at a hotel in Dallas, Texas will be approximately \$150, and the value of the banquet will be approximately \$50 or less.

4. Article XXIX, section 3 (2) prohibits members of the General Assembly, among other covered individuals, from accepting gifts or things of value with a value in excess of fifty dollars, unless the donor receives lawful consideration of equal or greater value in return or unless one of the exceptions set forth in section 3 (3) applies.

5. (a) Section 3 (3) (e) of Article XXIX establishes an exception to the gift ban for "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".

¹ Attached is a copy of the letter dated February 4, 2011, from Prasad Thotakura.

(b) As a part of the program, I have been invited to speak at the banquet regarding my experiences with the Colorado General Assembly.

6. (a) Section 3 (3) (c) of Article XXIX allows an individual subject to the gift bans of that article to accept an unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item.

(b) It is my understanding that I will be presented with a plaque in recognition of the Pride of India award. I did not solicit or otherwise apply for this award or recognition.

7. (a) Furthermore, section 3 (3) (f) of Article XXIX establishes an exception to the gift ban for reasonable expenses paid by a nonprofit organization for attendance at a convention, fact-finding mission or trip, or other meeting if the person on whose behalf the expenses are paid 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.

(b) As a member of the Colorado House of Representatives, I believe that I will be representing Colorado state government at this event, particularly in light of the fact that I will be speaking to the attendees about my experiences as a member of the Colorado General Assembly.

(c) The IAFC is a nonpartisan, nonprofit organization. However, I am advised by Mr. Prasad Thotakura that the amount of funding the IAFC receives from for-profit organizations likely exceeds five percent of its overall funding.

8. Accordingly, it appears that none of the exceptions to the gift bans established in section 3 of Article XXIX would expressly cover the acceptance of the travel and hotel accommodations expenses of the type described in this request. However, in its Position Statement 08-02, the Independent Ethics Commission (IEC) stated that the acceptance of travel-related expenses not expressly exempted by Article XXIX, section 3 of the Colorado constitution may, nonetheless, be considered a permissible gift to the state or local

government, rather than to the public official or employee, if five identified conditions are satisfied.^{2 3}

9. For the following reasons, it seems appropriate that the "gift-to-state" exception established in Position Statement 08-02 should apply to this situation:

(a) My attendance at the IAFC awards banquet would serve an overwhelming legitimate state purpose of promoting and furthering relationships and understanding between the people of the United States of America and the people of India and by serving as an example of achievement to young Indo-Americans.

(b) The travel arrangements for this trip would be appropriate and conducive to the purpose of attending the banquet. I would travel economy class from Colorado to Dallas, Texas and stay at a reasonably priced hotel near the event.

(c) My trip will be no longer than reasonably necessary to accomplish the business which is its purpose. I plan to travel to Dallas on the day of the event, April 16, 2011, and return the following day, April 17, 2011.

(d) I am not currently, have not been in the recent past, and will not be in the reasonably foreseeable future, in a position to take direct official action that would benefit the IAFC.

10. Finally, by acceptance of this opportunity, I do not believe that I would be breaching the public trust for private gain or personal financial gain

²The five conditions from Position Statement 08-02 are as follows:

1. The travel is for a legitimate state or local government purpose;
2. The travel arrangements are appropriate to that purpose;
3. The trip is no longer than reasonably necessary to accomplish the business which is its purpose;
4. The government official or employee who will be traveling 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;
5. The government official or employee is required to verify compliance with conditions #1-#4.

³This exception was also applied in the IEC's Advisory Opinions 09-01 (university professors); 09-04 (travel to Turkey); 10-02 (travel expenses from federal government); and 10-03 (expenses to attend NGA annual meeting). However, Letter Ruling 10-01 (tour and educational events provided by a nonprofit entity that receives more than 5% of its funding from for-profit sources) seemed to reverse course by providing that gift-to-state could not be relied upon in an instance where the facts come close, but do not meet, any of the enumerated exceptions to the gift ban.

as contemplated in section 6 of Article XXIX of the state constitution or as defined in section 24-18.5-101 (5), C.R.S., since the expenses that would be paid on my behalf would not be given by the IAFC to influence any official act that I might perform in the course of my public duties.⁴

Questions:

1. May I accept the value of the food and beverage at the Indian American Friendship Council annual awards banquet to be held in Dallas, Texas on April 16, 2011, at which I will be giving my remarks to the attendees regarding my experiences with the Colorado General Assembly as part of the scheduled program?

2. May I accept a plaque or similar unsolicited physical item of appreciation that the IAFC may present to me at the banquet in recognition of receiving the honor of the "Pride of India" award?

3. May I accept the payment of the travel-related expenses, including airfare to and from and ground transportation in Dallas, Texas, and the hotel accommodations in Dallas, to be paid by the Indian American Friendship Council for attendance at the awards banquet in Dallas?

4. If the members of the Independent Ethics Commission determine that I may not accept any one or more of the above-mentioned items, may I still accept the remaining item or items?

⁴**24-18.5-101. Independent ethics commission - establishment - membership - subpoena power - definitions.** (5) (a) Subject to the provisions of paragraph (c) of this subsection (5), the commission shall dismiss as frivolous any complaint filed under article XXIX that fails to allege that a public officer, member of the general assembly, local government official, or government employee has accepted or received any gift or other thing of value for private gain or personal financial gain.

(b) For purposes of this subsection (5):

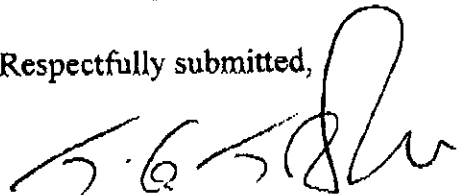
(I) "Official act" shall have the same meaning as set forth in section 24-18-102 (7).

(II) "Private gain" or "personal financial gain" means any money, forbearance, forgiveness of indebtedness, gift, or other thing of value given or offered by a person seeking to influence an official act that is performed in the course and scope of the public duties of a public officer, member of the general assembly, local government official, or government employee.

(c) This subsection (5) is repealed if the Colorado supreme court holds, in response to one or more written questions submitted by the general assembly pursuant to section 3 of article VI of the state constitution, that the standard of accepting or receiving "any gift or other thing of value for private gain or personal financial gain" specified in paragraph (a) of this subsection (5) is unconstitutional in applying section 3 (1) or (2) of article XXIX.

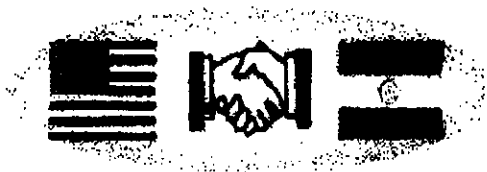
Thank you for your timely consideration of this request for an advisory opinion. I waive confidentiality for purposes of this request and the forthcoming advisory opinion.

Respectfully submitted,



Representative Janak Joshi
House District 14

enc.



Indian American Friendship Council (IAFC)

(Non-profit, non-religious, non-partisan organization)

Tax ID# 95-4822891; P.O. Box 610865, Dallas, TX 75267

www.iafcusa.org

Ph: 817-300-4747

February 04, 2011

To:

Hon. State Rep. Dr. Janak Joshi

Dist., 14th, Colorado

200 E. Colfax

Denver, CO 80203

Ph: 303-866-2937; email: janak.joshi@house.state.co.us

Sub: Inviting you as a Chief Guest at IAFC 8th Annual Banquet in Dallas on Sat. Apr. 16th, 2011 from 5:00 PM – 9:00 PM at FunAsia banquet Hall, Richardson, TX.

Dear Hon. State Representative Janak Joshi,

Greetings! We extend our hearty congratulations on your recent victory as a State Representative to serve the 14th district, Colorado. Our IAFC Board has unanimously resolved to invite you as a Chief Guest and confer "Pride of India" award at our banquet. You are truly an inspiration and role model to the Indian American community and especially to younger generation. It gives us an immense pleasure to invite you and listen to your experiences. Please accept our invitation and confirm your attendance at your earliest convenience. We will arrange your local accommodations and local transportation. Also, please email me your brief bio as well as photograph as soon as possible.

Please feel free to call me any time if you have any questions. We look forward for your favorable reply soon.

Best Regards,

Prasad Thotakura

Prasad Thotakura

Texas State Coordinator, IAFC

(M) 817-300-4747; Email: prasadthotakura@gmail.com

MISSION:

Indian American Friendship Council (IAFC) is a 501(C) (3) non-profit organization that provides and promotes political education and a common platform to exchange views with Local, National and International policy makers. Its mission is to improve United States-India relations, support developing countries, promote global democracy, protect the interests of the Indian-American community, and educate Members of Congress.