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### *Letter Ruling No. 09-02 (Luncheons)*

**SUMMARY:** CO Const. Art. XXIX does not prohibit a not-for-profit, non-lobbyist entity from hosting public officials and employees at an annual luncheon. However, except where a specific exception applies, a public official or employee is prohibited from accepting gifts (including meals and beverages) valued at more than \$50 from that entity per calendar year.

#### ***I. BACKGROUND***

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for letter ruling, asking whether a not-for-profit entity may host members of the General Assembly and other state public officials at an annual luncheon.

The not-for-profit requestor of this Letter Ruling is not registered as a lobbyist with the Secretary of State’s Office and therefore is not a “professional lobbyist,” as contemplated by Art. XXIX.

#### ***II. JURISDICTION***

Entities that are not “professional lobbyists” do not fall under the jurisdiction of the Commission. However, public officers, members of the General Assembly, local government officials, and government employees, as defined by CO Const. Art. XXIX Sec. 2(1), (3) and (6) are subject to Art. XXIX Sec. 3 (gift ban) and thus, under the jurisdiction of the Commission.

**III. APPLICABLE LAW AND PRECEDENT**

Section 2 of Article XXIX (Definitions) reads in relevant part:

(1) "Government employee" means any employee, including independent contractors, of the state executive branch, the state legislative branch, a state agency, a public institution of higher education, or any local government, except a member of the general assembly or a public officer.

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(3) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.

\* \* \*

(6) "Public officer" means any elected officer, including all statewide elected office-holders, the head of any department of the executive branch, and elected and appointed members of state boards and commissions. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.

Section 3 of Article XXIX (Gift ban) reads in relevant part:

(1) No public officer, member of the general assembly, local government official, or government employee shall accept or receive any money, forbearance, or forgiveness of indebtedness from any person, without such 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 accepted or received the money, forbearance or forgiveness of indebtedness.

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

In Position Statement 08-01 (Gifts), the Commission stated its desire to interpret Article XXIX in a manner that preserves what it believes was the intent of the electorate - "to improve and promote honesty and integrity in government and to assure the public that those in government are held to standards that place the public interest above their private interests." The Commission also referenced Section 6, which provides that those who breach the public trust for private gain or induce such breach shall be liable for monetary penalties.

#### ***IV. DISCUSSION***

The requestor entity is not an "individual who engages himself or herself or is engaged by any other person for pay or for any consideration for lobbying," as evidenced by its not being registered as a lobbyist with the Secretary of State's office. Therefore, this entity is not a "professional lobbyist" under Art. XXIX Sec. 2(5). As such, this entity is not subject to any restrictions under Art. XXIX and is not under the jurisdiction of the Commission.

Art. XXIX Sec. 3 does, however, prohibit a public official or employee from soliciting, accepting or receiving any gift or other thing of value worth more than \$50 in any calendar year, from a person<sup>1</sup>, without that person receiving lawful consideration of equal or greater value in return, unless it falls under a listed exception. This prohibition extends to the solicitation, acceptance or receipt, either directly or indirectly, as the beneficiary of a gift or thing of value given to a spouse or dependent child.

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<sup>1</sup> The constitutional definition of "person" includes entities and associations.

The Commission believes that there is a burden of inquiry placed upon each government official and employee to ascertain the value of items being offered to them as gifts, in order to ensure that he or she is not exceeding the \$50 gift threshold from a particular donor in any one calendar year. This is especially applicable in the scenario presented here, where the value of a meal may not be readily apparent.

The Sec. 3 gift ban does not apply where the person or entity seeking to give the gift receives “lawful consideration of equal or greater value in return.” The Commission finds no lawful consideration being given in return for lunch. The only possible lawful consideration would be from the speakers at the event, and they are already excluded from the gift ban under exception (e) (see discussion below).

There are two exceptions to Sec. 3’s gift ban that may be applicable here:

Exception (e) permits a government official or employee to accept “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,” even if its value exceeds \$50. Therefore, scheduled speakers at the luncheon may accept the meal and beverages, regardless of its value, so long as the hosting organization is the one paying. This, however, applies only if the person or entity giving the gift is the hosting organization and not a third party or entity; in that event, the \$50 yearly threshold from that particular donor would apply.

Exception (f) permits a government official or employee to accept “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.” Exception (f) is not applicable here because the not-for-profit entity requestor receives more than 5% of its funding from for-profit organizations or entities, as evidenced by its list of members, who are identified as “gold,” “silver,” “bronze,” and “partners,” presumably differentiated by the amounts of money they give. The vast majority on this list are for-profit entities.

The requestor explained that the purpose of its annual luncheons “is to educate legislators on issues that are of importance to the State and the business community, as well as to introduce legislators to statewide business leaders.” However laudable and valuable this purpose may be, it would be relevant only if a government purpose was being sought pursuant to exception (f). Because exception (f) has been deemed inapplicable here, the purpose of the luncheon becomes irrelevant.

## ***V. CONCLUSION***

CO Const. Art. XXIX Sec. 3 prohibits a government official or employee from accepting or receiving a gift or thing of value exceeding \$50 from any entity within any calendar year, without that entity receiving lawful consideration of equal or greater value in return. The Commission finds no lawful consideration here, except perhaps from the speakers at the event. Therefore, although the not-for-profit entity is free to host the annual luncheon, the attending government officials and employees may accept the meals and beverages only if the value of the meal is \$50 or less, and if the aggregate value of all gifts from this entity is \$50 or less for the entire calendar year. The only exception pertains to the individual(s) who are appearing to speak or to answer questions as part of the scheduled program. These individuals are permitted to accept “admission to, and the cost of food or beverages consumed” at the luncheon, without regard to their value, from the hosting organization.

### **The Independent Ethics Commission**

*Nancy E. Friedman, Chairperson*

*Matt Smith, Vice Chairperson*

*Sally H. Hopper, Commissioner*

*Larry R. Lasha, Commissioner*

*Roy Wood, Commissioner*

Dated: February 2, 2009