

State of Colorado



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Letter Ruling No. 09-03 (Meals to Board Members of Nonprofits)

SUMMARY: CO Const. Art. XXIX does not prohibit a nonprofit, non-lobbyist entity from providing a meal to one of its Board Members who concurrently is a government employee or official, or to his or her spouse or dependent child. The government employee or official, or his or her spouse or dependent child, may accept the meal, provided that it is being provided to all Board Members during a meeting and it is reasonably priced.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received two requests for letter ruling, which are consolidated here, asking whether meals with an annual aggregate value of more than \$50 that a nonprofit organization provides for all Board Members would be a prohibited gift under Amendment 41, when the meal is provided to a government employee or a family member of the government employee who is a Board Member. The not-for-profit requestors of this Letter Ruling are not registered as lobbyists with the Secretary of State’s Office and therefore are not “professional lobbyists,” 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 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.

In Position Statement 08-01 (Gifts), the Commission interpreted 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

Neither of the requestor entities is 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 neither being registered as a lobbyist with the Secretary of State's office. Therefore, neither of these entities is a "professional lobbyist" under Art. XXIX Sec. 2(5).

As such, these entities are not subject to any restrictions under Art. XXIX and are 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 person¹, 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.

The Commission believes that the nonprofit entity offering a meal during a meeting is receiving “lawful consideration of equal or greater value in return” through the volunteer efforts of the Board Member. The Board Member is giving of his or her time and expertise to participate on the Board, which is of equal or greater value to reasonably priced meals provided during meetings.

Because spouses and dependent children are not personally subject to the Sec. 3 gift ban, the IEC does not address the question of lawful consideration as it pertains to them. Under Sec. 3(2), the restriction on gifts and things of value being accepted by a spouse or dependent child hinges solely on whether some direct or indirect benefit will inure to the government official or employee. Therefore, as to a spouse or dependent child accepting meals during Board meetings, some direct or indirect benefit to the government official or employee would need to be demonstrated under Sec. 3(2). It is unlikely that such a scenario would occur under these facts.

The Commission also notes that in neither event is there an inherent or potential conflict of interest if the lunches are provided during a meeting to all Board Members and are reasonably priced.

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. This prohibition extends to such person’s spouse or dependent child, if the

¹ The constitutional definition of “person” includes entities and associations.

government official or employee is the beneficiary of such a gift or thing of value, either directly or indirectly. The Commission finds lawful consideration being given from the government official or employee who is serving as a Board Member of a nonprofit, non-lobbyist entity, in accepting meals during meetings in exchange for his or her service on the Board. Further, the Commission does not see any potential for the government official or employee to derive a direct or indirect benefit from the acceptance by his or her spouse or dependent child of a reasonably priced meal, during a meeting, from a nonprofit, non-lobbyist entity on which he or she sits as a Board Member, absent additional facts.

The Independent Ethics Commission

Nancy E. Friedman, Chairperson

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Dated: March 19, 2009