

REQUESTS FOR ADVISORY OPINIONS
from the
ARTICLE XXIX INDEPENDENT ETHICS COMMISSION

The following questions, each having been raised on more than one occasion by various individuals covered by Article XXIX of the state constitution, including members of the Colorado General Assembly and/or legislative employees attempting to interpret and comply with the terms of Article XXIX, are respectfully submitted to the members of the Independent Ethics Commission, pursuant to Article XXIX, Section 5 (5) of the Colorado constitution, for advisory opinions:

GIFT BANS

1. **"Private gain" or "personal financial gain"**. Article XXIX, Sections 1 (1) (d) and 6 refer to "breach[ing] the public trust for private gain" (Section 1 (1) (d) references "personal financial gain"). Similarly, the legislation enacted by the General Assembly last session to implement Article XXIX, Senate Bill 07-210, specified that a complaint filed with the Independent Ethics Commission that fails to allege that the covered individual accepted or received a gift or other thing of value for private gain or personal financial gain must be dismissed by the Commission. [See section 24-18.5-101 (5), C.R.S.] Section 24-18.5-101 (5), C.R.S., defines "private gain" or "personal financial" gain to mean any money, forbearance, forgiveness of indebtedness, gift, or other thing of value given or offered by a person *seeking to influence an official act performed in the course and scope of the covered person's public duties*. A very basic consideration that arises in virtually every situational analysis under Article XXIX, Section 3, is whether a violation of Section 3 (1) or (2)¹ *requires* that the covered person have solicited, accepted, or received, whether directly or indirectly, the money, gift, or other thing of value, for private gain or personal financial gain, as those terms are statutorily defined in section 24-18.5-101 (5) (b), C.R.S., or whether the mere fact of solicitation, acceptance, or receipt of the money, gift, or thing of value is

¹ Section 3. Gift ban. (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 a 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.

sufficient, in itself, to constitute a violation of Article XXIX, whether or not there was an attempt to influence an official act performed in the course and scope of the covered individual's public duties.

Query: To violate the terms of Article XXIX, Section 3 (1) or (2), must a covered person have solicited, accepted, or received the money, gift, or other thing of value *for private gain or personal financial gain*, as those terms are defined in section 24-18.5-101 (5) (b), C.R.S., or is the mere fact of solicitation, acceptance, or receipt of the money, gift, or thing of value sufficient on its face to constitute a violation of Section 3 of Article XXIX, regardless of any evidence of an attempt to influence an official act performed in the course and scope of the covered individual's public duties?

2. **Scholarships.** In many situations individuals covered by Article XXIX, Section 3 (1) and (2), or their dependent children, are seeking or are receiving academic scholarships. The gift bans prohibit a covered individual from soliciting, receiving, or accepting, directly or indirectly through that person's spouse or dependent child, a gift or thing of value having either a fair market value or aggregate actual cost greater than fifty dollars in any calendar year, unless the covered individual provides lawful consideration of equal or greater value in return or unless one of the exceptions set forth in the measure applies. From this language it would seem that even the mere *application* for an academic scholarship may violate the strict terms of the bans set forth in Section 3 of the measure. The scholarship issue also impacts other covered individuals who may have children in private elementary and secondary schools that offer needs-based scholarships for which there are no requirements other than financial need.

This office has previously provided the Commission members with copies of the Denver District Court orders entered in 2007 in two separate cases. One case was filed by the Boettcher Foundation and the other by the Daniels Fund seeking declaratory relief regarding qualifications for scholarships that those two entities were planning to provide to qualified students. In each case the court entered an order approving the stipulated agreement reached between the plaintiff and the Governor, represented by the Attorney General, finding that, for the type of scholarships offered by the entity, the requirements of attending a college or university in Colorado, maintaining a certain minimum course load or number of academic hours, maintaining a specified minimum grade point average, fulfilling certain reporting and administrative requirements, and meeting other minimum academic and good conduct standards, constituted lawful consideration of equal or greater value as contemplated by Article XXIX.

Query: The question we pose to the Commission is threefold. First, is a

scholarship, stipend, or discounted academic financial aid a "gift" or "thing of value" to which the prohibitions set forth in Article XXIX apply? Is it a "gift" regardless of whether there are additional ongoing requirements or conditions for the receipt of the benefit?

Second, is it a violation if the scholarship is not intended to breach the public trust for private gain or otherwise influence an official act that is performed in the course and scope of the public duties of the legislator or government employee?

Third, even if the Commission finds that a scholarship, stipend, or other academic financial aid is a gift or thing of value, do the conditions for receipt of the scholarship or other academic financial assistance -- such as maintaining a minimum grade point average or course load, minimum employment requirements, or other administrative conditions -- constitute lawful consideration of equal or greater value, as contemplated by the terms of Article XXIX?

3. Things of value: Inheritances, honoraria, discounts, negotiations for future employment, insurance proceeds, prizes. Section 3 (2) of Article XXIX of the state constitution prohibits a covered individual from soliciting, accepting, or receiving any gift or other thing of value having either a fair market value or aggregate actual cost greater than fifty dollars in any calendar year. By way of example, the provision lists several examples, including gifts, loans, rewards, promises or negotiations of future employment, favors or services, honoraria, travel, entertainment, or special discounts. In addition to scholarships discussed in question 2, above, covered individuals, including members of the General Assembly as well as legislative staff and other legislative employees, have struggled with the proper interpretation of Article XXIX as it relates to the receipt of certain "things of value" that appear, technically, to be prohibited by the terms of this provision. Here are some examples:

- ***Inheritances.*** A covered individual may be named a beneficiary of a loved one's testamentary devise or bequest and, as a result, entitled to receive something with a value in excess of fifty dollars from an estate or trust. Both of these terms (estate and trust) are included in the definition of "person" from whom a covered individual is prohibited from receiving a thing of value in excess of fifty dollars. Would the receipt of an inheritance or other testamentary devise or bequest violate the gift ban provisions of Article XXIX?
- ***Honoraria.*** Covered individuals, including legislators and legislative staff, are invited to make speeches or give presentations for which the

covered individual is paid an honorarium. Article XXIX expressly includes honoraria within the examples of "gifts and other things of value" to which the gift ban applies. However, Section 3 (2) goes on to exempt from the general prohibition against accepting or receiving gifts and other things of value, anything for which the covered individual provides "lawful consideration of equal or greater value in return". Arguably, the covered individual provides consideration in return for the honorarium in the form of time and preparation for making the speech or giving the presentation. Would the receipt of an honorarium for a speech, writing, or presentation constitute a violation of Article XXIX?

- ***Special discounts.*** Government employees are often given special discounts on hotels, entertainment, and a number of other items. The state home page promotes an entire list of discounts available to state employees from new tires to child care. Would the acceptance of these special state government employee discounts constitute a violation of the prohibitions set forth in Article XXIX? Would the acceptance of general discounts that are also available to individuals who are not even covered by Article XXIX, such as coupons accessible on the internet, AAA discounts, special financing for qualified applicants, and other similar consumer discounts, also constitute a violation?
- ***Negotiations for future employment.*** Similarly, "promises or negotiations of future employment" is an example of a gift or thing of value identified in Article XXIX, Section 3 (2) that a covered individual is prohibited from soliciting, accepting, or receiving. While there may not be any present consideration provided for such, one might wonder how a covered individual can effectively negotiate a salary with a future employer if he or she is barred from such activity under a strict interpretation of Article XXIX. Does negotiating one's future salary with a potential employer violate the terms of Article XXIX?
- ***Insurance proceeds.*** If a covered individual is the named beneficiary of proceeds from an insurance policy, would it be a violation of Article XXIX, Section 3 (2), to accept the insurance proceeds payment pursuant to the terms of the plan? Would it violate Article XXIX, Section 3 (1)?
- ***Prizes.*** Finally, there may be occasions when a covered individual may win a prize that entitles the individual to cash or a thing of value exceeding fifty dollars. Examples have been offered in the higher

education arena of prizes based upon extraordinary scholarly achievement, such as the Nobel Peace Prize. Would the acceptance of a prize, whether randomly awarded or specifically selected for extraordinary achievement in a specific field, violate the Article XXIX gift bans?

Query: Would the acceptance of these types of "gifts" or "things of value" for which there may be consideration and which are available to all government employees or available to the general public, or which are totally personal and completely unrelated to the public duties of the covered individual constitute a violation of the gift bans set forth in Article XXIX?

4. **Joint governmental agencies as "persons" or as "state government"**. As previously stated, Section 2 (4) of Article XXIX of the state constitution defines the term "person", which word is used in the gift ban portions of Section 3 to refer to those individuals and entities from whom covered individuals may not solicit, accept, or receive any money, forbearance, or forgiveness of indebtedness or any gift or other thing of value with an actual cost greater than fifty dollars. Section 2-3-311 (2), C.R.S., declares certain organizations (the council of state governments, the national conference of state legislatures, the energy council, and the American legislative exchange council) to be "joint governmental agencies." [See footnote 2 on page 6]. The questions arise whether a joint governmental agency is a "legal entity" for purposes of the definition of "person" in Section 2 (4), or whether, for purposes of the state government exception set forth in Section 3 (3) (f) of the measure, it is a "state or local government". [See discussion in Query 6, below.] The answer to this question becomes important to members of the General Assembly and, on occasion, legislative staff, who are invited to attend various meetings, conferences, and other events related to their legislative profession by these joint governmental agencies which, in turn, may provide travel arrangements, hotel accommodations, meals, and other social benefits to the legislator or legislative staff person.

Query: The question we pose to the Commission is twofold. First, is a statutory joint governmental agency a "person", as that term is defined in Section 2 (4) of Article XXIX, from whom covered persons may not solicit, accept, or receive any amount of money, forbearance, or forgiveness of indebtedness or any gift or other thing of value with an actual cost greater than fifty dollars?

Second, is a statutory joint governmental agency a "state government" as that term is used in the exception to the gift bans set forth in Section 3 (3) (f) of Article XXIX?

5. Conferences hosted by joint governmental agencies. Each year national legislative organizations host multiple meetings and conferences, including, typically, an annual conference. The meetings and conferences provide a forum for the sharing of information and ideas among legislators and their staff from across the country and present an opportunity for learning. As noted in the discussion in Query 4, four of these legislative organizations are statutorily declared in Colorado to be "joint governmental agencies", for which the General Assembly is authorized to subscribe to membership and pay membership fees from appropriations made to the legislative department of state government or, in the case of the American Legislative Exchange Council ("ALEC"), individual members are authorized to pay membership fees.² In addition to the annual fees for membership to these joint governmental agencies, a member of the General Assembly or a legislative staff person will typically pay the set registration fee for attendance at the meeting or conference, or it will be paid on his or her behalf by the state. In most cases, however, the amount of the registration fee does not begin to cover the actual cost of the benefits that the member or legislative staff person receives at the conference. For example, the annual conference hosted by the National Conference of State Legislatures ("NCSL") typically includes an opening reception, an evening dinner and social event, and other social events that are generally underwritten by a number of for-profit entities most of which, if not all, are represented by lobbyists. The conference also typically includes a plenary staff section luncheon and legislator-only plenary luncheons or dinners, as well, at which a highly regarded prominent keynote speaker addresses the audience.

While the state has paid the membership dues to the joint governmental agency and a legislator or legislative staff person attending a conference has paid the same "consideration" in the form of a registration fee as any other person attending that

² **2-3-311. Interstate cooperation.**

(2) (a) The council of state governments and the national conference of state legislatures are declared to be joint governmental agencies of this state and of other states which cooperate through them. The general assembly is authorized to subscribe to membership in such organizations and to pay membership fees therein from appropriations made to the legislative department of state government.

(b) The energy council is declared to be a joint governmental agency of this state and other states which cooperate through it. The general assembly is authorized to pay membership fees therein from appropriations made to the legislative department of state government.

(c) The American legislative exchange council is declared to be a joint governmental agency of this state and of other states which cooperate through it. Members of the general assembly are authorized to subscribe to membership in such organization. Membership fees shall be paid by the individual members; except that when members of the general assembly are selected by the president of the senate or the speaker of the house of representatives to represent the interests of Colorado at American legislative exchange council functions, the delegation selected shall reflect equally the percentage of members from each party of the general assembly, and the actual and necessary expenses of such members for travel, board, and lodging related to such attendance may be paid from appropriations made to the legislative department of state government.

conference, an argument may be made that the legislator or staff person has received something of value [greater than \$50] if he or she participates in the social events that are underwritten by for-profit lobbyist-represented entities and/or the plenary legislator or staff section luncheon or dinner. It is difficult to imagine, though, that a company or lobbyist provides the gift or thing of value to thousands of attendees with the intent to influence an official act performed in the course and scope of the public duties of one specific legislator or staff person who may attend the event.

Query: Is it a violation of any of the gift bans set forth in Section 3 of Article XXIX for a member of the legislature or a legislative staff person who has paid the registration fee (or on whose behalf the registration fee has been paid by the state) to participate in all the scheduled events and programs, including the social events that may be underwritten by for-profit entities represented by lobbyists and the plenary luncheons or dinners at which paid keynote speakers may talk, that are a part of the meeting or conference hosted by a joint governmental agency and available to all attendees?

6. Governmental entities as "persons". Section 2 (4) of Article XXIX defines "person" as follows: "'Person' means any individual, corporation, business trust, estate, trust, limited liability company, partnership, labor organization, association, political party, committee, or other legal entity." The term is used in the gift ban portions of Section 3, to refer to those individuals and entities from whom covered individuals may not solicit, accept, or receive any amount of money, forbearance, or forgiveness of indebtedness or any gift or other thing of value with an actual cost greater than fifty dollars. Whether this definition, in particular the phrase "or other legal entity", includes or excludes federal, state, and/or local governmental entities is a question that does not appear to be clearly addressed in the language of the amendment and, therefore, there is no clear understanding of what it encompasses. It might be noteworthy, however, that the proponents of Amendment 41 originally defined the term "person" in their initial proposed submission for review and comment by legislative staff to include governments and governmental subdivisions or agencies. The proponents subsequently removed that portion of the definition after the review and comment hearing in May of 2006, and that language did not appear in the final measure that was approved by the voters of Colorado in November 2006.

In analyzing Article XXIX in this regard, it is noteworthy that, among the gift ban exceptions listed in Section 3 (3) (f), is the exception of "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". [Emphasis added] This exception therefore begs the question, why carve out an exception for state or local government if those entities are definitionally excluded from the term "person" in the first place?

The answer to this question becomes important for certain covered individuals who may have the opportunity to receive gifts or other things of value from federal, state, or local governments in the form of registration fees or scholarships or other financial assistance for, flights to and from, and hotel accommodations at, various work-related conferences or meetings, meals offered by local governments seeking to inform and educate covered individuals such as members of the General Assembly about issues important to their citizens, among the many examples.

Query: In analyzing the application of the bans set out in Section 3 of Article XXIX, does the definition of "person" in Section 2 (4), from whom covered persons may not solicit, accept, or receive any amount of money, forbearance, or forgiveness of indebtedness or any gift or other thing of value with an actual cost greater than fifty dollars, include or exclude government entities on the federal, state, and local level?

7. Gifts from lobbyists vs. gifts from organizations represented by lobbyists. Section 3 (4) of Article XXIX of the state constitution prohibits a professional lobbyist, personally or on behalf of any other person or entity, from knowingly offering, giving, or arranging to give to a legislator (among others) any gift or thing of value of any kind or nature. On occasion, however, a member of the General Assembly or a legislative employee may receive a gift from an entity that is otherwise represented or whose industry may be represented by a lobbyist. For example, a legislative employee may wish to take advantage of a government employee discount offered by a hotel which discount may represent a value to the legislative employee that does not exceed fifty dollars. While the hotel itself may not have a lobbyist, the hotel industry or the tourism industry may be represented by a lobbyist. Another example may include a professional sports team that provides tickets to a legislator for a particular sporting event. If the lobbyist who regularly represents the interests of the sports team does not offer or give the tickets to the legislator, but rather the team itself gives the tickets to the legislator directly, is that a violation of Article XXIX, Section 3 (4), since the cost of the tickets would likely exceed fifty dollars? Is it a violation by the organization or entity that is represented by the lobbyist? Is it a violation by the legislator accepting the tickets if the value is less than fifty dollars? Similarly, the restaurant association traditionally provides a dinner party for the members of the General Assembly at the start of each

legislative session. While the association is represented by a lobbyist, it is the association of restaurants, itself, that actually provides the dinner event, not the lobbyist.

Query: Is the acceptance of a gift or other thing of value, whether or not it has an actual cost in excess of fifty dollars, directly from an organization or entity a violation of Article XXIX, if the organization or entity is typically represented by a lobbyist, but the gift or thing of value provided to the covered individual is coming directly from the organization or entity and not from the lobbyist? Even if the gift or thing of value is found by this Commission to be attributable, albeit indirectly, to the lobbyist, and even if it costs less than fifty dollars, is it a violation for the legislator or legislative employee to accept it because it would be a violation of Section 3 (4) for a lobbyist to offer or give it?

8. Gifts from lobbyists to a group or an office. Section 3 (4) of Article XXIX of the state constitution prohibits a professional lobbyist, personally or on behalf of any other person or entity, from knowingly offering, giving, or arranging to give to a legislator (among others) any gift or thing of value of any kind or nature. On occasion, however, a lobbyist may provide a gift or thing of value to an entire legislative staff agency or to the Senate body or to the House of Representatives. For example, a lobbyist may give a flower arrangement to the Senate in recognition of the first day of session or a large box of candy or bagels, for example, to an entire legislative staff agency to be enjoyed by all of the individuals employed by that agency or informational materials about the legislators to staff.

Query: Is it a violation of the bans set forth in Section 3 of Article XXIX of the state constitution for a legislative staff agency or the body of the Senate or House of Representatives or another group of individuals covered by the terms of Article XXIX to accept or receive a gift or thing of value that costs more than fifty dollars from a lobbyist if the gift or thing of value is given to the entity, not to a specific person, for the enjoyment of all the members or employees of that entity? Would it be a violation of Section 3 of Article XXIX for a legislative staff agency or the body of the Senate or House to accept the gift or thing of value simply because it would constitute a violation under Section 3 (4) of Article XXIX if a lobbyist provided the gift or thing of value?

9. Special occasion. Section 3 (3) of Article XXIX sets forth eight exceptions to the prohibitions established in Section 3 (1) and (2). [See footnote 1 on page 1] One of the exceptions states that a gift "given by an individual who is a relative or personal friend of the recipient on a *special occasion*" shall not be subject to the gift ban. [See Section 3 (3) (g), emphasis added] Notably, the term "special occasion" is not defined in Article

XXIX, leaving covered persons confused and concerned as to what exactly is contemplated by this exception. Many questions have been posed concerning the application of this exception. For example, if a married couple, one of whom is a legislative employee, keep separate bank accounts and the non-legislative employee pays the mortgage payment each month on the house in which they both reside, is that a gift to the legislative employee each month that does not fall within exception (g)? If a covered individual purchases and gives clothing to his or her child on a day that is not the child's birthday or a holiday and the value of the clothing exceeds fifty dollars, is that a violation of Article XXIX? One covered individual and her spouse go to dinner each month with their neighbors. They take turns paying. Would the acceptance of the neighbors' "gift" to the covered individual (and her spouse) six times each year violate Article XXIX? There are innumerable examples of friends or relatives providing items or money to a covered individual motivated by nothing more than love, generosity, or kindness. Are these violations of Article XXIX?

Query: How does the Independent Ethics Commission define "special occasion" as that term is used in Section 3 (3) (g) of Article XXIX and how will the Commission interpret the application of that exception? Do all things of value given by a friend or relative to a covered person out of love, generosity, or kindness constitute violations of the Article XXIX gift bans if such gifts are not given because of a "special occasion"?

10. Raffles, lottery tickets, and silent auctions. On occasion, a covered individual may purchase a raffle ticket at a fundraiser or possibly a \$1 lottery or power ball ticket. On other occasions a covered individual may be invited to attend and participate in a fundraising silent auction event, such as for a school. In these situations, the individual may ultimately receive a benefit the value of which far exceeds the cost of the ticket or price bid. In the case of a raffle or lottery ticket, the argument can be made that the amount the individual paid for the raffle or lottery ticket is actually the price of a "chance" to win for which the covered individual may actually have provided "lawful consideration of equal or greater value" for the ticket received as contemplated in Article XXIX, Section 3 (2). In the example of the silent auction, the covered person has an equal opportunity with all other participants to successfully bid on the item, offering a competitive "going rate" for the item, and therefore "lawful consideration". However, in all of these examples, the question is whether or not the 2008 Mercedes "won" with a mere fifty-dollar raffle ticket, the million-dollar winning lottery ticket purchased for just one dollar, or the weekend getaway at a mountain resort condominium "purchased" at a child's school silent auction for a mere \$200 is actually a violation of Article XXIX.

Query: Is it a violation of the prohibitions set forth in Section 3 (1) and (2) of

Article XXIX of the state constitution for an individual covered by the measure to participate in a raffle or silent auction or to purchase a lottery ticket -- with the possibility of receiving something of far greater value than the investment made -- should the individual actually receive the raffle prize, the auctioned item, or the winning lottery ticket?

REVOLVING DOOR

11. Revolving door - cabinet appointment. Section 4 of Article XXIX prohibits an individual covered by the measure from personally representing another person or entity for compensation before any other statewide elected officeholder or member of the General Assembly for a period of two years following the individual's vacation of office, frequently referred to as the "revolving door" provision. The revolving door provision has posed some concerns for members of the General Assembly who are term-limited or who otherwise do not continue in their legislative position. Historically, it has been customary for one or more of those individuals to be appointed by the Governor to serve in a cabinet position as the executive director of a state agency. While the primary responsibilities of an executive director are to manage and lead the agency, occasionally the executive director may need to testify before a committee of the General Assembly, such as the Joint Budget Committee, for example. Unlike the department's legislative liaison, however, whose job responsibilities and, by extension, compensation, are tied directly to representing and lobbying on behalf of the department, the executive director's occasional appearance before the General Assembly is typically incidental to his or her primary responsibilities.

Another consideration is the use of the word "person" in Section 4. The revolving door provision prohibits a covered individual from representing another *person* or entity for compensation. The term "person" is defined in Section 2 (4) to mean, "any individual, corporation, business trust, estate, trust, limited liability company, partnership, labor organization, association, political party, committee, or other legal entity." As previously noted in Question 6, however, the proponents of Amendment 41 originally defined the term "person" in their initial submission for review and comment by legislative staff to include governments and governmental subdivisions or agencies. The proponents subsequently removed that portion of the definition after the review and comment hearing in May of 2006, and that language does not appear in the final measure that was approved by the voters of Colorado in November 2006. This fact may be an important consideration in determining whether elected state officials are prohibited from accepting appointments to cabinet positions in the future.

Query: Is it a violation of Article XXIX, Section 4, for a former member of the General Assembly to be appointed to an executive cabinet position within two years after leaving the General Assembly and to serve as an executive director of a state agency, if such position does require, on occasion, for the individual to appear before legislative committees in his or her official capacity?

12. Revolving door - trade association. The language used in Section 4 of Article XXIX prohibits a statewide elected officer or a member of the General Assembly from personally representing another person or entity for compensation before any other statewide elected officeholder or member of the General Assembly for a period of two years. The question becomes how to interpret the phrase "personally represent...for compensation" in analyzing and attempting to comply with this constitutional prohibition. Notably, the term "represent" is not defined in Article XXIX and begs the question whether lobbying needs to be the exclusive, or at least primary, responsibility of the individual being compensated. In the past, former members of the General Assembly have accepted positions as executive directors of various organizations, including trade associations. While the former member may neither appear before any committee of the General Assembly to testify nor lobby on behalf of the trade association or other organization, or at least not on a regular basis, would the acceptance of such a position constitute a violation of the constitutional provision nonetheless regardless of the number of times the former legislator appears before the General Assembly or speaks to a member?

Query: Would a former member of the General Assembly violate Section 4 of Article XXIX of the state constitution, if he or she accepted a position as the executive director of a trade association or other organization within two years after leaving the General Assembly if the position did not require the former member to lobby or otherwise appear before any committees of the General Assembly to testify on behalf of the trade association or organization? What if the position required the former member to appear before a committee of the General Assembly, but only on occasion and not as a primary function of his or her position as executive director for which he or she would be compensated?