State of Colorado

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Advisory Opinion 10-04
(Donation of funds to other public employees)

SUMMARY:

It would not be a violation of Article XXIX of the Colorado Constitution for employees of state agencies to donate financial assistance to other state employees under the circumstances described in the request, subject to the conditions described in this opinion.

I. *BACKGROUND:*

The Colorado Independent Ethics Commission ("IEC or "Commission") has received a request from the Director of a division of a state agency, on behalf of the agency's employees, asking whether the division may create a "voluntary financial assistance project" ("project") whereby public employees may donate funds to an employee association, which would in turn make donations or grants to division employees who are experiencing financial difficulties due to the mandatory furloughs and budget reductions which have impacted state employees.[1] Employees would not be required to donate, and those who chose to participate would remain anonymous. Agency employees who need assistance would apply to a committee established specifically to review these requests.

[1] According to the request, an employee association has been in existence since 2001.

II. ***JURISDICTION:***

The IEC finds that employees of a state agency are “government employees” subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(1

III. APPLICABLE LAW:

Section 3 of Article XXIX 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.
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> (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:
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> (h) A component of the compensation paid **or other incentive** given to the recipient in the normal course of employment. (Emphasis added).

IV. DISCUSSION:

Section 3 prohibits 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, 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. However, the prohibition does not apply to compensation or other incentives given to employees in the normal course of employment.

Given that the financial assistance program described by the requestor is directly tied to the employment of the covered employees, the project as described does not violate Section 3 of Article XXIX. Moreover, the Commission believes that it is admirable that public employees want to assist their co-workers who may be experiencing financial difficulties and that this situation does not give rise to the undue influence or appearance of impropriety that Article XXIX is designed to prevent.

As stated above, Subsection (3)(h) carves out compensation and other incentives given to covered employees in the normal course of employment. In the instance described by the requestor, the employees' protective association aggregates and disburses employee assistance to employees affected by the state's budget-driven involuntary furlough program. The financial assistance is covered by the plain language of this exception.

The Commission has previously stated that although public employees should not be rewarded because of their status as public employees, neither should they be penalized. See, e.g., Position Statement 08-01 (gifts), page 8. The request submitted to the Commission describes the process by which funds for the project would be solicited. The request states that solicitations would be made to all division employees, and that funds may also be raised through employee fundraisers. Donations from outside sources would be accepted, except from vendors or other parties with whom the agency has a business relationship.

Although the request does state that the donors to the fund will remain anonymous, it also states that donations will be solicited by the Division Director or the Human Resources Director. It is important to the Commission that persons in positions of authority such as the Division Director, or Deputy Division Director, if applicable, as well as other supervisors, not know who is participating in the project and at what level.

Any solicitations that occur must be in the form of a letter or an email to all employees, and no personal or face to face solicitation may take place. Employees should be instructed not to discuss among themselves who is or is not participating in the project. No pressure may be placed on any employee to participate. The Commission also finds that it is important that outside parties not participate in this project if the donation could be construed as an attempt to influence an official act. This would mean that donations should not be accepted from vendors, members of the community regulated by this Division, or any other person doing business with that division or its parent agency.

V. Conclusion:

Assuming, without determining, that the facts as stated in the request are accurate, the Commission finds that there is no violation of Article XXIX in the creation of this program as described by the requestor.

The Independent Ethics Commission

Matt Smith, *Chair*
Roy V. Wood, *Vice Chair*
Dan Grossman, *Commissioner*
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