

State of Colorado



INDEPENDENT ETHICS COMMISSION

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Letter Ruling No. 09-05

(Attendance at Educational Events Provided by the Colorado Health Institute)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for a member of the general assembly and their staff to attend educational events sponsored by the Colorado Health Institute, a nonprofit entity, under the circumstances described in the request. However, it would be a violation of Art. XXIX for the nonprofit entity to pay a *per diem* to members of the general assembly and their staff.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for a letter ruling,¹ asking whether certain educational events which the Colorado Health Institute (“CHI”)² would like to sponsor for members of the general assembly and their staff would constitute a violation of Article XXIX. Specifically, CHI asks three questions:

1. May CHI sponsor educational roundtables on health policy issues and provide lunch to attendees?

¹ The request was made as a request for advisory opinion, but because the nonprofit entity is not under the jurisdiction of the Commission, the response is in the form of a letter ruling.

² The Colorado Health Institute has waived confidentiality relating to this request.

2. May CHI sponsor a two day health policy conference and provide lodging, meals and travel expenses for the participating members of the general assembly?

3. May CHI sponsor an 8-10 session certificate program for members of the general assembly, and pay the participating legislators a \$99 *per diem* for those meetings that occur while the general assembly is not in session, in addition to travel expenses for those legislators coming from outside the Denver Metro area?

II. JURISDICTION

The IEC finds that a member of the general assembly is a government employee subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(1).

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.

(3) The prohibitions in subsections (1) and (2) of this section do not apply if the gift or thing of value is:

* * *

(f) Reasonable expenses paid by a nonprofit organization ... 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), as in all subsequent position statements and opinions rendered by the Commission, 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.”

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. Section 3(3)(f) (“exception (f)”) exempts reasonable expenses paid by a nonprofit organization for participating in a convention, fact-finding mission, trip, or other meeting under certain circumstances. This exception is limited to nonprofits that receive less than 5% of their funding from for-profit entities or organizations.

According to its submissions to the Commission, CHI is a nonprofit entity which receives less than 5% of its funding from for profit sources. It is a “neutral, nonpartisan source of health-related data and policy analysis for policy makers, health planners, the business and nonprofit communities, and advocacy and consumer groups, health care providers, foundations and the media.” CHI is not registered as a “professional lobbyist.”

Prior to the passage of Article XXIX, CHI sponsored several roundtable discussions on health care issues for members of the general assembly. These

roundtable discussions include a lunch which is valued at less than \$10 per person. CHI also sponsors a two-day health policy conference. CHI provides meals, lodging and travel expenses for legislators which would be in excess of \$50. Finally, CHI also is planning an 8-10 session certificate program for members of the general assembly which would consist of policy discussions. Some of these sessions would occur during the legislative session, and some would be during the interim. CHI would pay legislators a \$99 *per diem* for those sessions which are scheduled while the General Assembly is not in session.

Exception (f):

Under Article XXIX, a government employee may not accept a gift, or other thing of value worth more than \$50 in any calendar year from a person, unless it falls under an enumerated exception. Exception (f) exempts: “[r]easonable expenses paid by a nonprofit organization...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 nonprofit organization receives less than five percent (5%) of its funding from for-profit organizations or entities.”

Applying exception (f) to the request currently before the Commission, the Commission makes the following determinations:

1. “Reasonable Expenses”

CHI has informed the Commission that the lunches for the roundtable discussions are less than \$10 per lunch. This amount is reasonable. The request does not contain any specific information pertaining to the costs for the Health Care

Conference. If the accommodations and travel expenses are appropriate, then the requirement that the expenses be reasonable appears to be satisfied.

2. Purpose of Attendance

In order to decide whether exception (f) applies, the Commission must determine whether the recipient of the fellowship is attending “a convention, fact-finding mission or trip, or other meeting” and if he is representing the State. The Commission has previously interpreted this provision broadly. (See, Advisory Opinions 09-05 and 09-08). The Commission believes that these roundtable discussions and conferences are “fact-finding missions,” and may be considered as gifts to the state since they relate to issues likely to be considered by the general assembly, and a thorough understanding of these issues is important to the state. This criterion therefore appears to be satisfied.

3. Nonprofit Entity

The final criterion that must be met under exception (f) is that the donor of the gift must qualify as a nonprofit entity that receives less than 5% of its funding from for-profit entities or organizations. CHI is a tax exempt nonprofit under section 501(c)(3) of the Internal Revenue Code. According to its submissions to the Commission, CHI is funded exclusively by three foundations, Caring for Colorado Foundation, the Colorado Trust and the Rose Community Foundation. The Commission therefore finds that this request falls squarely under exception (f), and participation by members of the general assembly at these programs would be permissible.

The Commission finds that there is no inherent or potential conflict of interest or appearance of impropriety in this instance. The Commission has been informed that CHI is not affiliated with nor does it use lobbying entities. Furthermore, it appears that

the purpose of these conferences is to educate legislators, rather than to solicit the goodwill of the members of the general assembly or to influence an official act.

Finally, the Commission has considered the issue of the *per diem* offered for the health policy certificate program.

There is no provision in exemption “f” for the payment of any funds other than reasonable expenses. The Commission therefore determines that the acceptance of a *per diem* in addition to reasonable expenses is not permissible under Article XXIX.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for a government employee to participate in these conferences, expenses of which would be paid by a nonprofit entity that receives less than 5% of its funding from for-profit sources, however the acceptance of a *per diem* in addition to reasonable expenses is not allowed.

The Independent Ethics Commission

Matt Smith, Chairperson
Roy Wood, Vice Chairperson
Dan Grossman, Commissioner
Sally H. Hopper, Commissioner
Larry R. Lasha, Commissioner

Dated: September 21, 2009