State of Colorado

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POSITION STATEMENT 08-02 (Travel)

I. Introduction

The Colorado Constitution authorizes the Independent Ethics Commission ("IEC" or "Commission") to give advice and guidance on ethics issues arising under Article XXIX of the Colorado Constitution and any other standards of conduct and reporting requirements as provided by law. The IEC issues this Position Statement for the purpose of further clarifying the provisions of Section 3 of Article XXIX of the Colorado Constitution ("Section 3"). In this Position Statement, the Commission explains when certain gifts of travel are permissible under Section 3, even if not expressly exempted under Article XXIX. It is the Commission's hope that this Position Statement will increase the awareness of public officials and employees and the public at large. The Commission encourages public employees and officials to request further clarification if needed, through a request for advisory opinion.

II. Guiding Principles

The Commission reaffirms its Guiding Principles as set forth in Position Statement 08-01 (Gifts). The Commission continues to follow applicable constitutional guidelines, and to interpret Colorado Constitution 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 references Section 6, which provides that those who breach the public trust for private gain or induce such breach shall be liable for monetary penalties.

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.
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> (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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> (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;
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> (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;
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> (emphasis supplied)

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. Travel is expressly included on the list of prohibited things of value.

Some travel, though, is permissible because it falls under the specific exceptions set forth in Section 3 (e) and (f). The IEC's interpretation of the scope and applicability of these exceptions is not included in this Position Statement, but will be addressed by the Commission at a later date.

Travel that may be considered to be a gift to the State or local government

The Commission believes that travel that is not expressly exempted from Section 3 may nonetheless be permissible in certain circumstances.[1] The Commission believes that **acceptance of travel-related expenses may be considered a gift to the State or local government, rather than to the public official or employee, and therefore permissible, when five conditions are met.** These five conditions are designed to eliminate the possibility that acceptance of travel-related expenses could create a breach of the public trust. The Commission also recognizes that attendance at conferences and certain travel by public employees and officials can be beneficial to the State and local communities, can serve an important governmental purpose, and, in

[1] The Commission realizes that situations may arise in which an appearance of impropriety may be created even though there is no direct violation of the law. See Article XXIX (1)(c): "They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated." Even if the travel may be for a legitimate State or local government purpose, it could give rise to an appearance that the payment or reimbursement was made to solicit the goodwill of the public official or employee in ways not immediately apparent. In such situations, individuals are strongly encouraged to seek advice from the Commission.

some situations, may in fact be part of the inherent duties of a government employee or official.

The five conditions that must be satisfied are:

Condition #1: <u>The travel is for a legitimate State or local government purpose.</u>

The Commission believes that for a gift of travel to be considered a gift to the State or local government, there must be a legitimate governmental purpose related to that person's official position.[2]

Condition #2: <u>The travel arrangements are appropriate to that purpose.</u>

In determining whether the travel arrangements are appropriate to the governmental purpose, factors to be considered include:

a. Travel arrangements must be similar to that of others who are attending. Is the person flying in a private jet when others are traveling coach? Are all participants staying in the same hotel, or are some staying at a 5-star hotel while others are staying in a motel down the street?

b. The itinerary must consist primarily of meetings with other government officials, briefings, educational activities, or other official events. A few meetings sprinkled into an otherwise vacation itinerary is insufficient.

Condition #3: <u>The trip is no longer than reasonably necessary to accomplish the business which is its purpose.</u>

For example, if the business itinerary will be completed in three days, one may not extend the trip for an additional day to sightsee at the government's expense. There may, however, be exceptions for some foreign travel, when immediate return is impossible or impractical.

[2] The Commission recognizes that there may be circumstances in which the government purpose may so outweigh the absence of another condition that the travel may nonetheless be permissible. In those situations, a request for advisory opinion from the Commission is encouraged.

Condition #4: <u>The government official or employee who will be traveling is not currently, was not in the recent past, and will not in the reasonably foreseeable future, be in a position to take direct official action with respect to the donor.</u>

The Commission believes that this fourth condition goes to the heart of preserving public confidence in government. Those individuals who are in a position to take direct official action, either currently or in the reasonably foreseeable future, such as procurement officers, should not be placed in situations where their judgment might be perceived to be influenced one way or another. The inclusion of language that the individual not have been in a position to take direct official action in the recent past is to avoid any perception that that individual is being rewarded for a previous official act or decision.

Condition #5: <u>Government officials and employees are required to verify compliance with conditions #1 through #4 above. This condition #5 may be satisfied by any of the following means:</u>

<u>a) written supervisory approval in accordance with the internal rules of the agency or the State;</u>

<u>b) official public approval by the body of which the individual is a member;</u>

<u>c) written explanation by the government official or employee of why he or she believes the travel meets conditions #1 through #4; or</u>

<u>d) an advisory opinion from the Commission.</u>

In summary, an otherwise prohibited gift of travel is to be considered a permissible gift to the State or local government, rather than to the public official or employee, if the five conditions set forth above are satisfied.[3]

This, as all Position Statements, is intended to give broad advice to government officials and employees and the public. The Commission encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinion and letter ruling.

The Independent Ethics Commission

Nancy E. Friedman, Chairperson
Matt Smith, Vice Chairperson
Sally H. Hopper, Commissioner
Larry R. Lasha, Commissioner
Roy Wood, Commissioner

November 21, 2008

[3] It may be appropriate in certain circumstances for a government official or employee to be accompanied by a spouse or partner on a trip that is paid for by a private entity. This arises sometimes in the case of foreign travel for diplomatic or protocol reasons. These questions may be addressed to the IEC for fact-specific advice.