

State of Colorado



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POSITION STATEMENT 09-01 (Gifts from Lobbyists and Organizations Represented by Lobbyists)

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 clarifying the provisions of Section 3(4) of Article XXIX of the Colorado Constitution [“Section 3(4)”], relating to gifts from lobbyists. 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 2 of Article XXIX (Definitions) reads in relevant part:

(5) "Professional lobbyist" means any individual who engages himself or herself or is engaged by any other person for pay or for any consideration for lobbying. "Professional lobbyist" does not include any volunteer lobbyist, any state official or employee acting in his or her official capacity, except those designated as lobbyists as provided by law, any elected public official acting in his or her official capacity, or any individual who appears as counsel or advisor in an adjudicatory proceeding.

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.

(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.

* * *

(4) Notwithstanding any provisions of this section to the contrary, and excepting campaign contributions as defined by law, no professional lobbyist, personally or on behalf of any other person or entity, shall knowingly offer, give, or arrange to give, to any public officer, member of the general assembly, local government official, or government employee, or to a member of such person's immediate family, any gift or thing of value, of any kind or nature, nor knowingly pay for any meal, beverage, or other item to be consumed by such public officer, member of

the general assembly, local government official, or government employee, whether or not such gift or meal, beverage or other item to be consumed is offered, given or paid for in the course of such lobbyist's business or in connection with a personal or social event; provided, however, that a professional lobbyist shall not be prohibited from offering or giving to a public officer, member of the general assembly, local government official, or government employee who is a member of his or her immediate family any such gift, thing of value, meal, beverage, or other item.

Sec. 24-6-301(6), C.R.S. reads in relevant part:

"Professional lobbyist" means any individual who engages himself or is engaged by any other person for pay or for any consideration for lobbying. "Professional lobbyist" does not include any volunteer lobbyist, any state official or employee acting in his official capacity, except as provided in section 24-6-303.5, any elected public official acting in his official capacity, or any individual who appears as counsel or advisor in an adjudicatory proceeding.

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. Article XXIX Sec. 3(4) prohibits "professional lobbyists" from knowingly offering, giving, or arranging to give, any gift or other thing of value to government employees or officials or their immediate families. This is an absolute prohibition, not subject to the \$50 gift threshold applicable to accepting gifts and other things of value from persons who are not professional lobbyists, with two exceptions.

A. Gifts From Lobbyists, Generally

The IEC believes that lobbying as education and persuasion fulfills an important function in government, and that the free exchange of information and argument should be encouraged. However, a line should be drawn between those types of activities and

other activities, such as gift-giving, that can create conflicts of interest or appearances of impropriety.

Constitution Article XXIX Sec. 3(4) creates an absolute ban on gift-giving by professional lobbyists. The language is so clear that it would be difficult to argue that the voters intended otherwise. Therefore, even though public officials and employees are generally bound by the \$50 gift limit, a professional lobbyist may not give gifts or things of value to these individuals at all, in any amount. This flat prohibition also extends to immediate family members of public officials and employees. There are two exceptions: A professional lobbyist is permitted to give gifts to members of his or her own immediate family¹. The provision also exempts political campaign contributions.

B. “Professional Lobbyist” Defined

Article XXIX Sec. 2(5) defines “professional lobbyist” as “any individual who engages himself or herself or is engaged by any other person for pay or for any consideration for lobbying.” Expressly excluded from the definition are “volunteer lobbyists, any state official or employee acting in his or her official capacity, except those designated as lobbyists as provided by law, any elected public official acting in his or her official capacity, or any individual who appears as counsel or advisor in any adjudicatory proceeding.”

This definition is substantively identical to the definition of “professional lobbyist” found in §24-6-301, C.R.S. (Secretary of State). The only differences are that the definition used by the Secretary of State is not gender neutral and that a specific statute is cited. These differences are explained by exchanges during the Review and Comment Hearing with the Office of Legislative Legal Services, Colorado General

¹ The \$50 gift limit would then apply if the recipient were a public official or employee.

Assembly, between Jennifer Gilroy, Revisor of Statutes for Legislative Legal Services, and Martha Tierney, an attorney who was one of the proponents of Amendment 41².

Clearly, then, the drafters intended that the definition of “professional lobbyist” included in Article XXIX be the same as that used by the Secretary of State’s office. Regulations and opinions relating to lobbyists, as promulgated and issued by the Secretary of State’s office, should be highly persuasive in applying and interpreting who is a “professional lobbyist,” as defined in Article XXIX Sec. 2(5).

C. Organizations Represented by Professional Lobbyists

Professional lobbyists may not “knowingly offer, give, or arrange to give” any gift or thing of value to a government official or employee. The IEC believes, however, that this prohibition does not extend to organizations or groups that might be represented by

² Gilroy: In the definition of “professional lobbyist” set forth in Section 2. of the proposed measure, it appears that a word or words are missing from the first line, in which the definition reads, “Professional lobbyist” means any individual who engages or is engaged by any other person for pay or for any other consideration for lobbying.” The same definition found in 24-6-301(6), Colorado Revised Statutes, includes the word “himself” following the word “engages”. In order to clarify this definition and maintain gender neutrality, would the proponents consider adding the words “himself or herself” or the word “individually” to the definition after the word “engages”?

Tierney: Yes. We took that word out because of the gender neutral issue thinking it was clear enough, but if your reading indicates that maybe its [sic] not so clear then we’ll can (sic) consider adding the [inaudible].

* * *

Gilroy: In the definition of “professional lobbyist” set forth in Section 2. of the proposed measure, the proponents use the term “lobbying”. This term is not defined in the measure. What do the proponents intend by this term? In order to eliminate the possibility of ambiguity, would the proponents consider adding a definition of “lobbying”? If not is it the proponents’ intent that the definition set forth in section 24-6-301(3.5) of the Colorado Revised Statutes govern the proposed measure in this respect?

Tierney: It is our intent that the existing definition govern the measure.

a professional lobbyist or whose industry may be represented by a professional lobbyist. In these situations, the other provisions of Article XXIX would apply, such as the \$50 gift threshold, and any relevant exceptions, such as exceptions “e” (admission to and food and beverages consumed at a reception, meal or meeting when the recipient is part of the scheduled program) or “f” (reasonable expenses paid by a qualifying nonprofit organization for attendance at certain types of events under certain circumstances). In the event that questions do arise with regard to whether or not an organization’s gift is merely a subterfuge for a professional lobbyist who has “arranged to give” a gift through that client, those case-specific questions may be resolved through a request for advisory opinion or letter ruling (in advance) or a complaint to the IEC.

D. Lobbyist Gifts to Groups

The IEC believes that the prohibition on gifts from professional lobbyists, in any amount, to “any public officer, member of the general assembly, local government official, or government employee” should also apply to gifts given to groups that are composed of these individuals. Therefore, gifts from a professional lobbyist to an office or a group of these public officials or employees should be deemed to be gifts to the individuals, and thus prohibited in any amount and in whatever form.

E. Non-Lobbyist Gifts to Groups

In section C above, the IEC stated its belief that the prohibition against lobbyist gift-giving does not extend to organizations or groups that might be represented by a professional lobbyist or whose industry may be represented by a professional lobbyist, where there is no subterfuge or interference by the professional lobbyist. Therefore,

government officials and employees may accept gifts from these organizations or groups provided they fall under the \$50 gift threshold.

However, here, too, gifts to an office or a group of these government officials or employees should be deemed to be gifts to the individuals. Therefore, any gift given by a non-lobbyist to an office or a group of government officials or employees must have a fair market value or actual cost of \$50 or less. The value should not be allocated among the officials or employees. The gift as a whole cannot exceed a value of \$50 and the aggregate cost of gifts from the particular donor to the particular recipient group cannot exceed \$50 in any calendar year.

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

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