

Policy and procedure

Approved: Executive Director

Subject: Amendment 41 – Gift Ban Limits and Regulations

Effective date: April 2023

Questions: Director, Administration & Finance – Jenny Dock Ext 6707

PURPOSE

In 2008, Colorado's Independent Ethics Committee (the "IEC"), which is charged with enforcement of Amendment 41, issued two Position Statements providing guidance on the acceptability of certain types of gifts under Amendment 41. The following is to advise you of this new guidance and to let you know that DRCOG intends to follow the IEC's Position Statements for the types of gifts addressed therein. In February of 2019 the The Independent Ethics Commission for the state of Colorado increased the rate from \$65.00 to \$75.00.

POLICY

Under Amendment 41, employees are prohibited from soliciting, accepting, or receiving—whether directly or indirectly through a spouse or dependent child—any gift (or other thing of value) that has a value of over \$75.00. This means that an employee cannot accept a total of more than \$75.00 in gifts from any one person or organization in any one year. This includes, but is not limited to, gifts, loans, rewards, promises or negotiations of future employment, favors or services, honoraria, travel, entertainment, or special discounts from a person. An item is not a gift if the employee gives equal or greater consideration in return, and gifts are valued at actual cost or fair market value. To respond to the uncertainty surrounding Amendment 41's gift ban, the IEC on October 6 and November 21 issued Position Statements explaining circumstances under which certain types of gifts can generally be accepted without violating Amendment 41. These Position Statements directly addresses the following:

- Scholarships
- Honoraria
- Insurance proceeds and inheritances
- Prizes and winnings from raffles, lotteries, and silent auctions
- · Gifts given by a relative or personal friend on a special occasion
- Travel.

PROCEDURE The Position Statement says the above types of gifts can generally be accepted if specific criteria are met. For example, prizes can be accepted if the competition for the prize is fair, open to all similarly situated persons, and not rigged in favor of the public official or employee, and there is no evidence the prize was given based on the recipient's status as a public official or employee. As another example, gifts given by relatives or friends on special occasions are permissible provided that the personal relationship—rather than the governmental position—is the controlling factor for the giving of the gift, and receipt of the gift will not result in or create the appearance that the recipient is (1) using his or her office for personal benefit; (2) giving preferential treatment; (3) losing her or her independence or impartiality; or (4) accepting gifts or favors in exchange for performing official duties.

Regarding travel, the November 21 Position Statement says that travel-related expenses may be considered a permissible gift when five conditions are met, as follows: (1) the travel is for a legitimate state or local government purposes; (2) the travel arrangements are appropriate to that purpose; (3) the trip is no longer than necessary to accomplish the business which is its purpose; (4) the government official or employee who will be traveling has not in the recent past, is not currently, and will not in the foreseeable future be in a position to take directly official action with respect to the donor who is giving the travel Amendment 41; and (5) conditions 1-4 are verified. For DRCOG, the Director of Administration and Finance must provide signed written authorization for this verification.

DRCOG intends to follow the principles set out in the Position Statements for the types of gifts covered, unless there is some later change in the law. Therefore, you are encouraged to review the IEC's Position Statements, particularly if you have questions about receipt of any of the above-listed types of gifts. While the Position Statements addresses some of the uncertainties regarding Amendment 41, you should continue to take a conservative approach to receipt of gifts. DRCOG's expectation remains that its employees will strive to avoid not only actual violations of Amendment 41, but the appearance of violations.

As a reminder:

- Holiday gift baskets accepted by a DRCOG employee are to be shared with staff in the High Noon break area or donated to charity. If a basket is received, please contact the Director of Administration and Finance for further instruction.
- Remember to keep a record of free food, free beverages, token items or other gifts that are offered to you so that you have an accounting in the event that any issues should arise concerning your compliance.

The most recent IEC's Position Statements issued in February 2023 are on Cognizance. You may also visit <u>Current Gift Ban Amount | Independent Ethics Commission (colorado.gov)</u> for more information.

State of Colorado



Selina Baschiera, Chair Cole Wist, Vice-Chair Elizabeth Espinosa Krupa, Commissioner Annie Kao, Commissioner Sarah Mercer, Commissioner

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Position Statement 23-01

(Adjustment of the Gift Ban Dollar Limit)

Summary: The gift ban dollar limit of Article XXIX §3(2) is adjusted to \$75.00.

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 may, in its discretion, issue position statements to provide guidance to covered individuals and the general public. Rule 4 of the IEC Rules of Procedure.

The Commission issues this Position Statement to inform public officers, members of the General Assembly, local government officials, government employees, and members of the public that the gift ban dollar limit is adjusted to \$75.00 for the next four years.

II. Discussion

Subject to limited exceptions, public officers, members of the general assembly, local government officials, and government employees are prohibited 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 (\$50) in any calendar year. Colo. Const. Art. XXIX § 3(2). The Commission is periodically required to adjust the gift ban dollar limit, as follows:

The fifty-dollar (\$50) limit set forth in subsection (2) of this section shall be adjusted by an amount based upon the percentage change over a four-year period in the United States bureau of labor statistics consumer price index for Denver-Boulder-Greeley, all items, all consumers, or its successor index, rounded to the nearest lowest dollar. The first adjustment shall be done in the first quarter of 2011 and then every four years thereafter.

Colo. Const. Art. XXIX § 3(6).

As a result of occasional geographic adjustments made by the Bureau of Labor Statistics, the

Denver-Boulder-Greeley consumer price index has been succeeded by the Denver-Aurora-Lakewood consumer price index. From the beginning of 2019, the date of the last adjustment, to the end of 2022, the consumer price index for the Denver-Aurora-Lakewood area, for all items and all consumers, increased by 16.2%. Therefore, the \$65.00 gift ban limit that was established in 2019 must be increased by 16.2% and rounded to the next lowest dollar. As such, the Commission announces the gift ban limit to be \$75.00, until the first quarter of 2027 when the limit shall be readjusted.

The Independent Ethics Commission

Selina Baschiera, Chair Cole Wist, Vice-Chair Elizabeth Espinosa Krupa, Commissioner (not participating) Annie Kao, Commissioner Sarah Mercer, Commissioner

Dated: February 22, 2023

¹ See Position Statement 19-01.