



# Colorado State University System

Colorado State University ■ Colorado State University – Pueblo

## Office of the General Counsel

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TO: COLORADO STATE UNIVERSITY SYSTEM  
FROM: LORETTA MARTINEZ, GENERAL COUNSEL  
DATE: January 8, 2007  
RE: AMENDMENT 41: ETHICS IN GOVERNMENT

As you know, Colorado voters approved Amendment 41 on November 7, amending the Colorado constitution and adding article XXIX. I have since conducted a preliminary legal analysis of the amendment and its implications for faculty and staff at CSU System institutions. Late last week, the Presidents of all Colorado institutions of higher education also received preliminary advice from the Colorado Attorney General that provides some additional clarification, although many questions remain unanswered at this time.

Amendment 41 restricts the ability of public officers, members of the General Assembly, local government officials, and state government employees to accept or receive money, gifts or other things of value from any person, which includes any individual, corporation, association, political party or other legal entities. The Amendment also prohibits professional lobbyists from giving any gifts or things of value to such individuals; establishes an independent ethics commission to oversee compliance with the new law; and restricts members of the General Assembly and other statewide office holders from representing persons or entities before the state for two years after leaving public office.

Please bear in mind when reviewing the following information that there are currently many questions surrounding the interpretation and application of the Amendment and what it will mean to each of us personally as CSU System employees. Some of these questions may be resolved through legislative action or through legal challenges in the future, but we are otherwise required, now that the Amendment is in effect, to act in compliance with the law as approved by the voters and as interpreted by the Office of General Counsel and the Attorney General.

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It is my interpretation that all employees of both CSU System campuses, the System office, and agencies or affiliated entities under the direction of either campus or the System are required to comply with the Amendment's restrictions, regardless of whether they are faculty, state classified staff, administrative professionals, or independent contractors.

The heart of Amendment 41 is a gift ban, which prohibits CSU System employees from accepting or receiving any money, forbearance, or forgiveness of indebtedness from any person or from soliciting, accepting or receiving, either directly, or indirectly through a spouse or dependent child, any gift or thing of value with a fair market or aggregate value of more than 50 dollars annually from any person, without such person receiving lawful consideration of equal or greater value in return from the CSU System employee who accepted or received the gift.

The Amendment specifies only eight exceptions to this ban:

- a campaign contribution as defined by law;
- an unsolicited item of trivial value less than \$50, such as a pen, calendar, plant, book, note pad or other similar item; an unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- unsolicited informational material, publications, or subscriptions related to the recipient's performance or official duties;
- 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 answer questions as part of a scheduled program;
- 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 as long as the non-profit organization receives less than 5% of its funding from for-profit organizations or entities;
- gifts or things of value given by an individual who is a relative or personal friend of the recipient on a special occasion;
- a component of the compensation paid or other incentive given to the recipient in the normal course of employment.

It is my understanding that the following actions by CSU System employees will be affected by Amendment 41:

RECEIVING MONETARY RECOGNITION FROM SOMEONE OTHER THAN THE  
RECIPIENT'S EMPLOYER, SUCH AS THE FINANCIAL COMPONENT OF THE  
NOBEL PRIZE

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The preliminary opinion of the Attorney General is that Nobel Prizes or other similar awards cannot be accepted if based solely on prior conduct and achievements not tied to future performance. However, such awards will need to be evaluated on a case-by-case basis. If there is a requirement that the monetary portion of an award be used for a specific purpose or in a certain manner, then that award may be acceptable. Research grants that are to be used in a specific field of study are likely acceptable because the grants are tied to future conduct.

#### ACCEPTING SCHOLARSHIPS AWARDED TO THE DEPENDENTS OF UNIVERSITY EMPLOYEES

This depends on the nature of the scholarship itself. Acceptance of scholarships that are based solely on past performance, such as high-school grade point average, with no requirements in terms of future performance is prohibited. If, however, the scholarship requires some type of future performance—maintenance of specific grade point average, attendance at a specific institution, studies toward a specific degree—it may be acceptable. It is my preliminary opinion that receipt of outside scholarships by covered employees or their family members likely will be permissible because adequate consideration generally will support such awards. Scholarships in the form of tuition discounts at one of the System campuses likely will also be viewed as employee compensation or an incentive, which would be allowable under the law.

#### RECEIVING GIFTS OR MONETARY ASSISTANCE OF MORE THAN \$50 FROM A COVERED PERSON WHERE NO EXCEPTIONS APPLY (FOR EXAMPLE, A GIFT FROM A NON-PROFIT AGENCY TO ASSIST AN EMPLOYEE WHO IS COPING WITH A SEVERE ILLNESS OR DISASTER)

According to the Attorney General's Office, if no exceptions are applicable, accepting aid in situations similar to the examples given above is prohibited.

#### RECEIVING LOTTERY WINNINGS, GAMBLING PROCEEDS, OR WINNINGS FROM RAFFLES OR SPECIAL CONTESTS

According to the Attorney General's Office, if state employees make wagers or purchase lottery tickets, they can legally accept any related prize winnings. However, employees are prohibited from accepting such winnings over \$50 if they have given "no consideration" for the prize, i.e. purchased a ticket or entry.

#### ACCEPTING COMPENSATION FOR CONSULTING SERVICES OR OUTSIDE EMPLOYMENT

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In my opinion as General Counsel, Amendment 41 does not eliminate a CSU System employee's ability to provide services to third parties such as consulting or research and to receive monetary or other forms of compensation for the provision of such services.

#### ACTING AS A LOBBYIST

Only a few CSU System employees, including the president, are authorized to lobby on behalf of the institution, and an additional set of restrictions apply to people with this responsibility. My office is working with our registered System lobbyists to assure we are in compliance with the law.

Prior to passage of enabling legislation clarifying these terms or advisory opinions issued by the independent ethics committee, CSU System employees are advised to consider any gift or item of value given by a covered person, and not specifically exempted, to fall within the Amendment's restrictions. This includes gifts; loans; rewards; promises or negotiations of future employment; favors or services; honoraria; travel; entertainment; special discounts; tickets to sporting, cultural or community events; memberships of any type; meals and beverages provided separately or at any type of event; use of facilities or equipment that have value; and admission to meetings, conferences or seminars.

For that reason, CSU employees should avoid accepting or receiving money, gifts or items of value unless: (1) the aggregate annual value of gifts or things of value from any one person is less than \$50; (2) one of the eight exceptions to the gift ban applies; or (3) consideration of equal or greater value exists between the CSUS employee and the person giving the money, gift, or other item of value.

The most conservative and prudent approach to compliance with the Amendment would be to decline entirely all money, forms of gifts, or things of value not supported by some form of consideration between the recipient and the giver or not within the eight exceptions to the gift ban. Additionally, CSU System employees may choose to pay a person the actual value of an item offered such as the cost of a meal at a function and seek reimbursement of such expense as a legitimate business expense, where appropriate.

For CSU System employees who choose to accept or receive money, gifts, or things of value within the \$50 limitation and other restrictions and exemptions of the Amendment, it may be advisable to keep an annual record or log of items received that can be used to establish proof of compliance in the event a complaint is lodged against the employee with the ethics commission. Employees who violate the provisions of Amendment 41 may be liable for double the amount of the financial equivalent of any benefits obtained and other such penalties allowed by law.

Individual employees with specific concerns about what is acceptable should consult with a supervisor and/or department head for clarification, and our Office of the General

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Counsel will attempt to assist departments and supervisors as much as possible in clarifying what is legally permissible. Within the next few weeks, you will receive additional information about web-based information resources we are developing concerning Amendment 41 guidelines, as well as education/training sessions that the Office of General Counsel will hold to address employees' questions and concerns.