LEGAL OPINION

To:    Representative Dave Williams

FROM:    Office of Legislative Legal Services

DATE:    August 10, 2021

SUBJECT:    Implications under Amendment 41 of legislator participation in political fund-raising events sponsored by political organizations affiliated with a legislative caucus

Legal Question

To what extent does participation by a member of the General Assembly in a political campaign fund-raising event sponsored by a political organization that is affiliated with a legislative caucus implicate article XXIX of the Colorado Constitution?

Short Answer

Although a campaign contribution is an exception to the gift ban under Amendment 41, this exception does not extend to other types of gifts or things of value that could be offered to a legislator in connection with a political fund-raising event sponsored by

1 This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

2 Colo. Const. art. 29, addressing "Ethics in Government", is more commonly known and referred to as "Amendment 41" and will be referred to in this memorandum as "Amendment 41".
a political organization affiliated with a legislative caucus. Accordingly, a legislator who hosts or otherwise attends a political fund-raising event sponsored by such an organization needs to be mindful of how the legislator's participation in the event may implicate Amendment 41. In particular, depending upon the nature of the fund-raising event, there are three ways that participation by a legislator may implicate Amendment 41: 1) The consumption of food or beverage or the acceptance of other things of value at the event with a value that exceeds $65 may violate the constitutional gift ban; 2) the promotion of an event as being one hosted by the legislator could be viewed as a benefit to the legislator and, therefore, a prohibited gift under Amendment 41 if the actual costs for holding the event are paid by a private party even if the event is intended for the enjoyment of others; and 3) the legislator's participation in a fundraising event that is heavily supported by and provides opportunities for donors, professional lobbyists, and others with an interest in the business of the General Assembly to obtain paid access to legislators could be viewed as a breach of the public's trust or as creating a justifiable impression among members of the public that such trust is being violated.

**Discussion**

1. **Background**

In July of 2020, House Minority Leader Hugh McKean formed a political organization (527 organization) entitled Restore Colorado Leadership Fund (Restore Fund). A political organization is one of several tax-exempt groups formed under the federal internal revenue code that may engage in some form of political activity. Political organizations are "created to influence or attempt to influence the selection, nomination, election, or appointment of candidates." Under Colorado law, political organizations are defined as "a political organization defined in section 527(e)(1) of the federal 'Internal Revenue Code of 1986', as amended, that is engaged in the influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and that is exempt, or intends to seek any exemption, from taxation pursuant to section 527 of the internal revenue code." See § 1-45-103 (14.4), C.R.S. Because a political organization is formed under § 527(e)(1) of the internal revenue code, it is often referred to as a "527 organization". In this memorandum, reflecting the statutory definition, the entity will be referred to as a "political organization".

A political organization under the Colorado Fair Campaign Practices Act ("FCPA") means "a political organization defined in section 527 (e)(1) of the federal 'Internal Revenue Code of 1986', as amended, that is engaged in the influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and that is exempt, or intends to seek any exemption, from taxation pursuant to section 527 of the internal revenue code." See § 1-45-103 (14.4), C.R.S. Because a political organization is formed under § 527 (e)(1) of the internal revenue code, it is often referred to as a "527 organization". In this memorandum, reflecting the statutory definition, the entity will be referred to as a "political organization".

organizations must file disclosure reports with the appropriate filing officer. They must also register with the Internal Revenue Service and disclose information about the contributions they receive and the expenditures they make. Unlike other entities that undertake political activity, such as political committees or political parties, Colorado law does not place limits on the amount of money that can be contributed to or spent by political organizations.

Restore Fund is incorporated as a nonprofit corporation under Colorado law. According to its articles of incorporation, Restore Fund's purpose and activities include "provid[ing] information on public preferences and attitudes on current issues to policymakers, particularly at the state level." On its committee registration form filed with the Colorado Secretary of State under the FCPA, Restore Fund lists its purposes as "educat[ing] and inform[ing] Colorado voters regarding candidates for the Colorado House of Representatives, primarily supporting Republicans and opposing Democrats."

On June 23, 2021, Restore Fund sponsored a Hawaiian Luau Party on the rooftop of the Halcyon Hotel in Denver. Minority Leader McKean, in addition to four named Republican members of the House, "along with "[y]our Colorado State Representatives" are listed on the invitation as hosts of the event. The invitation asks guests to join the hosts "for appetizers and tropical cocktails to celebrate the end of the 2021 legislative session." The invitation lists various sponsorship levels with a monetary amount corresponding to the sponsorship level, ranging from an individual sponsorship that costs $250 to a "Paradise" sponsorship that costs $25,000.

On June 29, 2021, Restore Fund sponsored a political fund-raising event at a private home. The invitation did not list any sitting legislators as members of the host committee. The host committee requested invitees to join them for an evening reception with Minority Leader McKean, Assistant Minority Leader Geitner, "along

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5 Under Colorado law, a political organization must disclose: All contributions it receives; the name and address of any person contributing $20 or more to the political organization; the occupation and employer of any natural person contributing $100 or more to the political organization; and any spending for Colorado political activities that is more than $20 in a reporting period. See § 1-45-108.5 (1), C.R.S.; SOS FAQ document.


7 SOS FAQ document.

8 The named hosts for the Hawaiian Luau Party event, in addition to Rep. McKean, are Representatives Geitner, Pelton, Rich, and Ransom.
with your Colorado Republican State Representatives". The invitation lists prices for hosting and attending the event.

Restore Fund is also sponsoring a golf tournament on August 16, 2021, at Pelican Lakes, a resort and golf club located in Windsor, Colorado. The invitation is contained in an email you received from Monica Owens Beauprez. It appears that all of the members of the House Republican caucus were listed as invitees on the email. The email asked the invitees to let Ms. Beauprez know if they plan to play in the golf tournament or just attend the reception held after the golf tournament. The email adds as a "friendly reminder": "[P]lease do not agree to play in a foursome without chatting with us first. One of the "perks" for our major sponsors is that they have a Rep. in their foursome, so we will place each of you. If you do get a request, please run it by us first." (Emphasis in original.) Unlike the Hawaiian Luau Party event, the golf tournament invitation does not specify the sponsor or hosts of the particular event.

In your opinion, Restore Fund is controlled by Minority Leader McKean. It is your understanding that these events hosted by Restore Fund are used by the House Republican Caucus (the Caucus) to raise money to elect a Republican House majority in the 2022 general election. As with the Hawaiian Luau Party, legislators are invited to participate in these events and are frequently marketed as hosts of a particular event. It is generally required that persons desiring to attend the event pay a fee that is mostly a donation to Restore Fund (with some portion of the payment presumably used to cover some or all of the costs of putting on the event unless food or beverages are donated). In your experience, professional lobbyists attend these events by making donations on their own behalf or by delivering checks made by the clients they represent. Alcohol and catered food were or will be served at these events. It is your understanding that the alcohol is donated. At some events sponsored by the Restore Fund, cigars are donated and distributed for consumption by the attendees.

You have stated that the legislators do not pay for the golf outing and that the use of the golf course is either donated to the Caucus or made available to the Caucus at a substantial discount. You have further opined that House minority leadership and its fund-raising vendors encourage legislators to participate in this type of event because it is a perk for large donors to play golf in a foursome with legislators.

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9 Ms. Beauprez is the founder and managing partner of a fund-raising, event planning, and public affairs company named the WestBrooke Group.
2. **Requirements of Amendment 41**

Under Amendment 41, a covered official, including a member of the General Assembly, is prohibited from soliciting, accepting, or receiving any gifts or things of value in an aggregate amount that exceeds $65 in any one calendar year from any person, either directly or indirectly, without that person receiving lawful consideration of equal or greater value in return, unless it falls under an exception.  

Amendment 41 lists eight exceptions to this general gift ban. One such exception is a "campaign contribution as defined by law." In addition, Amendment 41 also permits a covered official to accept a gift in the form of "admission to, and the cost of food and beverages 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."  

Beyond the limited exceptions specified in section 3 of Amendment 41, there are no other exceptions permitting a covered official to accept a gift or other thing of value from any person without the covered official providing lawful consideration of equal or greater value. Although, as noted above, Amendment 41 permits a covered official to accept a campaign contribution as defined by law, there is no general exception for items that may be offered, accepted, or received in connection with political activities, including political fund-raising events. "There is no listed exception in [Amendment 41] for political events or political conventions."  

Although, as noted above, there is an exception to the gift bans in Amendment 41 that permits a covered official to accept food or beverages consumed at an event, that exception requires the covered official to "speak or to answer questions as part of a scheduled program." This Office has advised legislators that, in our judgment, merely being listed on a program of an event as being in attendance, or even being recognized

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10 Section 3 (2) of Amendment 41; Independent Ethics Commission Advisory Opinion 10-07 (Organization and Funding of Colorado's Women's Caucus), August 19, 2010 ("AO 10-07"), at p. 3.  
11 Section 3 (3) of Amendment 41.  
12 See § 3 (3)(a) of Amendment 41.  
13 See § 3 (3)(e) of Amendment 41.  

by name at an event, does not satisfy the requirements of this exception to Amendment 41.\textsuperscript{15}

Amendment 41 also prohibits professional lobbyists from giving any gift or thing of value to a covered official, regardless of the value of the gift or the context in which it is given.\textsuperscript{16} The Independent Ethics Commission (IEC or the Commission) has held that the prohibition provides no exceptions for covered individuals attending political events or political conventions.\textsuperscript{17} As such, although a professional lobbyist is permitted to make a campaign contribution to the campaign committee of a covered official in accordance with law, the professional lobbyist is not permitted to give anything else to the covered official to help facilitate fund-raising efforts.

As noted above, there is nothing in Amendment 41 restricting legislators from soliciting campaign contributions (as contrasted with other gifts or things of value),\textsuperscript{18} nor is there anything in Amendment 41 restricting legislators from creating political organizations or other legal entities for the purpose of soliciting campaign contributions as permitted by law. However, there is an ever-present concern that undertaking these allowable forms of political activity could put legislators in the position of accepting improper gifts, breaching the public trust, or displaying improper appearances that would be strictly prohibited if engaged in without the cover of political activity. The IEC has been sensitive to these concerns. In Advisory Opinion 10-07 (AO 10-07), the IEC identified certain specific limitations on proceeding in this manner and further identified that: "There is some additional concern by the Commission that permitting members or groups of members of the General Assembly

\textsuperscript{15}The interpretation by this Office also accords with Advisory Opinions adopted by the IEC. See, e.g., Independent Ethics Commission Advisory Opinion 11-09 (Acceptance of a Complimentary Ticket to a Dinner by a Public Employee), May 19, 2011, at p. 3 (Covered official not entitled to accept a complimentary ticket to a dinner where the official "is not scheduled to speak or answer questions as part of the scheduled program for the Honors Program dinner.") https://iec.colorado.gov/sites/iec/files/AdvisoryOpinion_11-09_IEC.pdf; Independent Ethics Commission Advisory Opinion 10-14 (Acceptance of a Luncheon from a Political Subdivision), September 16, 2010, ("AO 10-14"), at p. 4 (in order for a covered official to claim the exception under section 3 (3)(e) to Amendment 41, "individuals must be featured as speakers or presenters in agendas, calendars, and other promotional materials.") https://iec.colorado.gov/sites/iec/files/AdvisoryOpinion_10-14_IEC.pdf AO 10-14, at p. 4.

\textsuperscript{16}Section 3 (4) of Amendment 41.

\textsuperscript{17}PS 12-02, at p. 2.

\textsuperscript{18}Section 3 (3)(a) of Amendment 41.
to create a 501 (c)(3) organization in order to solicit funds could be abused and used as a means to get around Article XXIX and campaign finance laws.”

3. Analysis
Based on the reasons discussed above, legislators attending political fund-raising events sponsored by Restore Fund at which they are accepting, on a complimentary basis, food, beverages, rounds of golf, cigars, or other things of value raises concerns of a potential violation of the constitutional gift ban set forth in Amendment 41. In addition, to the extent that persons or entities playing a large role in sponsoring these events are professional lobbyists or others with an interest in business before the General Assembly, there is an added concern that the personal interactions between legislators and donors at these events may breach the public's trust or, at a minimum, create the justifiable impression among members of the public that such trust is being breached in violation of Amendment 41. Our specific concerns are as follows: 1) In connection with these types of events, legislators are participating without paying to attend, consuming food and beverages, including alcohol, or accepting other things of value such as cigars or rounds of golf in excess of the current $65 gift limitation which likely violates the constitutional gift ban; 2) an event promoted as being "hosted" by a legislator could be viewed as the "host" legislator's event in which case a third-party's payment of the costs of the event could be viewed as a prohibited gift to the "host" legislator; and 3) participating in fund-raising events that are heavily supported by and provide opportunities for donors, professional lobbyists, and others with an interest in the business of the General Assembly to obtain paid access to legislators could be viewed as a breach of the public trust or create the justifiable impression among members of the public that such trust is being violated. These particular concerns will be addressed below.

3.1. Accepting gifts or other things of value in excess of the gift limitation amount under Amendment 41
As previously noted, under Amendment 41, a member of the General Assembly is prohibited from soliciting, accepting, or receiving any gifts or things of value in an aggregate amount that exceeds $65 in any one calendar year from any person, either directly or indirectly, without that person receiving lawful consideration of equal or greater value in return or unless one of several limited exceptions applies. Although

19 AO 10-07, at page 5.
20 Section 1 (1)(c) of Amendment 41.
there is an exception for campaign contributions as defined by law, this exception does
not extend to events in which food and beverage are consumed as part of enticing
donors to contribute to political entities, nor does it extend to other activities
undertaken in an effort to raise money for political purposes. And, while a member of
the General Assembly is permitted to accept a gift of food or beverage in excess of the
$65 limit while attending an event, as noted above, such consumption is permitted only
if the member is speaking or answering questions as part of a scheduled program.\textsuperscript{21}
Amendment 41 does not allow members of the General Assembly to individually or
collectively exempt themselves from these normal gift restrictions by forming a
nonprofit entity through which gifts may be collectively accepted on behalf of its
individual members.

In the situations that you have described, fellow members of the Caucus who attend
events sponsored by Restore Fund are treated to complimentary food and beverages
and, on occasion, cigars. It appears that participants in the upcoming golf tournament
are able to enjoy a complimentary golf outing.\textsuperscript{22} The receipt by any legislator of an
aggregate gift that exceeds $65 from any one donor in a calendar year is a violation of
the gift limitations specified in Amendment 41 unless an exception applies. With
respect to beverages and food consumed at an event, a legislator is prohibited from
accepting more than $65 of such items unless the legislator is speaking or answering
questions as part of a scheduled program (unless another exception applies).
Therefore, with respect to an offer of food, beverages, entrance in the golf tournament,
or even a cigar, a legislator should not accept any such gift if the total value of the gifts
received exceeds the limitation on aggregate gifts that may be accepted from a
particular donor in that calendar year unless one of the limited and narrow exceptions
to Amendment 41 applies.

\textbf{3.2 When a legislator is promoted as the host of an event, there is a concern
that the event could be viewed as the legislator's event and payment of the costs of

\textsuperscript{21} Section 3 (3)(e) of Amendment 41.

\textsuperscript{22} As of the date of this memorandum, the cost of playing 18 holes of golf at the Pelican Lakes Golf
Club for a non-member is $79 before 2 P.M. and $57 after 2 P.M. Seniors, military, veterans, and
Windsor residents receive a 10% discount. https://pelicanlakeswindsor.com/green-fees/. Nevertheless,
the value of a ticket to the golf event for Amendment 41 purposes is not determined merely by reference
to the cost a member of the public would pay to play golf at the Pelican Lakes Golf Club but the cost
any member of the general public would pay for purchasing a ticket to the event which, because it is a
fund-raising event, presumably costs more than the price of a round of golf. See Independent Ethics
Commission Letter Ruling 12-01 (Value of Meal), February 12, 2012, at p. 5 ("The fair market value [of
the cost of a ticket to an event] is the price the matter is offered for sale or service. The amount of the
gift, therefore, is the price that the ticket is offered to the general public.").
the event could be viewed as a prohibited gift to the legislator if the actual costs are paid by private parties even if the event is for others' enjoyment as well

The invitation to the Hawaiian Luau Party sponsored by Restore Fund lists as hosts of the event Minority Leader McKean, four other named members of the Caucus, along with Your Colorado State Representatives." (Italics in original.) As discussed below, an individual who is subject to Amendment 41 faces legal exposure if he or she is promoted as the host of an event or even if he or she is reasonably viewed as the host of an event. In such circumstances, payment of the costs of the event could be viewed as a gift to the nominal host, even where the actual costs are paid by the donors to the event or by others.

On February 17, 2017, then-Senator Vicki Marble moderated and participated in a question and answer session at a community meeting at which a panel of local government officials discussed oil and gas development. The invitation to the meeting described Senator Marble as the host of the event. The fee for the rental and the costs of food and beverage consumed at the event were paid for by a private energy company.

A complaint was filed against Senator Marble with the IEC for violating Amendment 41. There, the specific issue was whether Senator Marble violated the Amendment 41 gift ban provisions by allowing the private company to pay for what was, in effect, Senator Marble's community event.

In the Marble Findings and Conclusions, the IEC found, among other things, that an event may constitute a gift when a private party pays for the event on behalf of a covered individual. The Senator had benefitted from the event by receiving a forum, free of charge, at which she was able to address her constituents regarding oil and gas drilling in their community. She received food and beverages, free of charge, to provide to her constituents. She spent a considerable amount of time at the event presenting her views on fracking, her aide spent a substantial amount of time planning the event, and the Senator's name was a central draw of the event. Senator Marble was listed as a host of the event and she presided as host during the event. A majority of the IEC

23 See Footnote 8, above.


25 Id., at paragraph 53. The Senator's aide had worked closely with the sponsor energy company's representative to plan and market the event, invite speakers, and create a list of invitees, using the legislator's email address for communications and she had signed emails she authored as the Senator's aide.
concluded that the preponderance of the evidence established that Senator Marble was, as the host, "a necessary party to the event." "The fact that [she] was a necessary party reinforces that it was [the Senator's] event."\textsuperscript{26} The Commission attributed constructive, if not actual, knowledge of the planning and execution and therefore the hosting of the meeting to the legislator, even though her actual involvement was minimal.\textsuperscript{27}

A plurality of the IEC further concluded that the preponderance of the evidence demonstrated that the private company's payment of the costs of the event was a gift to the legislator.\textsuperscript{28} The Commission reasoned that payment of the cost of an event is a "thing of value" within the meaning of section 3 (2) of Amendment 41. In the Marble case, the IEC determined that the event provided the legislator the opportunity to interface with constituents and address concerns by providing a particular perspective on energy issues to her constituents. Regardless of whether the private company or the public also benefited from the event, "Senator Marble was able to hold an event for her constituents and get her message out without paying for the costs of the event she hosted. Section 3 of [Amendment 41] prohibits outsourcing the costs of such an event to private donors.\textsuperscript{29}

In summary, three of the five members of the IEC found by a preponderance of the evidence that the legislator accepted a gift in violation of section 3 (2) of Amendment 41. Applying the penalty provisions of Amendment 41, Senator Marble was ordered to pay a penalty of double the cost of the event or $2,242.36.\textsuperscript{30}

The IEC decision in the Marble case was appealed by Senator Marble to the Denver District Court. The district court held that the IEC had abused its discretion in finding that Senator Marble had violated Amendment 41 by rendering a final decision without

\textsuperscript{26} Id., at paragraph 54.


\textsuperscript{28}Marble Findings and Conclusions, at paragraph 56.

\textsuperscript{29} Id., at paragraph 57.

\textsuperscript{30} Under § 6 of Amendment of 41, a covered individual who breaches the public trust for private gain is subject to a civil penalty of double the amount of the financial equivalent of any benefits obtained by such actions. In the Marble case, the cost of the event, comprised of the room rental charge, food, drink, gratuity and tax, came to $1,121.18. This amount was doubled in accordance with § 6 so that the civil penalty imposed on Senator Marble was $2,242.36.
a majority of the commissioners voting on the final decision. The district court reversed the IEC's finding that Senator Marble had violated Amendment 41.\footnote{Marble v. Jones, et al., Case No. 18CV32433 (District Court, City and County of Denver June 28, 2019). Because of the procedural error, the Denver District Court did not address Senator Marble's substantive legal objections to the IEC's determination. The IEC did not pursue the matter after the district court's reversal so the matter ended with the ruling of the Denver District Court.}

The fund-raising parties you are inquiring about do not present the same factual situation as was present in the Marble case. There may be differences between a community meeting open to the public and a private fund-raising event. The events sponsored by Restore Fund are conducted for the sole purpose of raising funds for political campaigns, whereas the event in the Marble case was a public meeting to address oil and gas development at the local level. The benefit of using the meeting to address constituents may not be as direct in the events sponsored by Restore Fund where the invitees may not even be constituents of a particular legislator. Nevertheless, any legislator hosting and being present at one of these fund-raising events may still be appreciating a personal benefit. Among other things, the event gives such legislator an opportunity to speak to, talk with, and network among the type of influential people who play a large role in financing political campaigns.

In the Marble case, a plurality of the IEC found that a legislator hosting an event could be considered to be a "necessary party" to an event in which a legislator's name and presence are used to draw people to the event.\footnote{The connection is more pronounced if the legislator plays a part in organizing the event. In the case of an event sponsored by Restore Fund, it is unlikely that more than a handful of members assume any significant role in organizing any of these fund-raising events.} The "necessary party" finding reinforces the idea that the legislator was hosting the event. In such circumstances, under the IEC's Marble decision, a complaint could be filed against the legislator "host" for receiving a benefit in having the cost of the forum provided to the legislator even though the actual costs of the event are paid by the donors to the event. Accordingly, if a legislator is listed on the program as the host of an event ostensibly sponsored by Restore Fund, under the same logic that persuaded a plurality of the IEC in the Marble case, the IEC could similarly find that payment of the costs of any of these fund-raising events is a gift to any such hosting members, even if the actual costs are assumed by the donors to the events.

Despite the reversal of the IEC's decision in the Marble case by the Denver District Court, the IEC decision in that case still provides some insight into how the IEC would view an event in which a legislator acts as the host of an event. In such circumstances, the event will likely be viewed as the legislator's event and payment of
the costs of the event will likely be viewed as a prohibited gift to the legislator even if the actual costs are paid by private parties for others' enjoyment. At a minimum, because of the Marble decision, a complaint that alleges that a legislator accepted this type of benefit by "merely" hosting a political fund-raising event would seem to withstand a dismissal by the IEC on the grounds that the complaint is frivolous.33

3.3 Participation in fund-raising events that are heavily supported by and provide opportunities for donors, professional lobbyists, and others with an interest in the business of the General Assembly to obtain paid access to legislators could be viewed as a breach of the public trust or as creating a justifiable impression among members of the public that such trust is being violated.

You have stated Restore Fund solicits campaign contributions from professional lobbyists or the clients of professional lobbyists and that professional lobbyists attend the organization's events. Although Restore Fund, as a political organization, is permitted to solicit contributions from professional lobbyists as permitted by law, soliciting campaign contributions from donors, professional lobbyists, and others with an interest in the business of the General Assembly creates a concern about a breach of trust or a justifiable impression among members of the public that such trust is being violated.

Again, there is nothing illegal about forming a political organization as a vehicle to raise contributions for the Caucus, but the IEC has cautioned legislators about avoiding an appearance of impropriety in the solicitation of funds.34 The IEC has also cautioned covered officials about doing something through an association that they are not permitted to do as individuals. The IEC has additionally cautioned legislators to avoid even an appearance of impropriety in connection with monetary solicitations on behalf of caucus-type organizations or any other organization in which they are involved.35

The IEC has articulated the concern about improper appearances:

33 Under the IEC's rules, a "frivolous complaint means a complaint filed without a rational basis in fact or law for the IEC's involvement, including complaints that are untimely or over which the IEC lacks jurisdiction." Independent Ethics Commission, Rules of Procedure, Rule 3.5. https://iec.colorado.gov/rules/rules-of-procedure

34 AO 10-7, at p. 5.

35 AO 10-07, at p. 3. Although AO 10-07 concerned the ability of a legislative caucus-type organization to raise money to defray the expenses of the organization, the same appearance concerns are present where legislators are soliciting campaign contributions on behalf of a political organization.
Appearances of impropriety are generally referred to as "perception issues" or "violating the smell test". They can weaken public confidence in government and create a perception of dishonesty, even among government officials who are in technical compliance with the law. Such conduct has the potential to damage an official's reputation just as much as illegal conduct.\textsuperscript{36}

Here, not only do professional lobbyists and their clients assume a significant role in financing the activities of Restore Fund, but in the case of the golf tournament invitation in particular, the invitation specifically asks legislators not to arrange their own foursomes in order that sponsors will be able to place donors, many of whom may have an interest in legislation and some of whom are presumed to be professional lobbyists, in a foursome with legislators. This very type of arrangement, in which professional lobbyists or corporate clients can purchase a ticket to an event in exchange for direct access to legislators, has drawn criticism from the IEC. In 2010, the IEC considered the legality of a fund-raising event at which legislators were to be seated at various tables in the room at which donors (some of whom were corporate donors and professional lobbyists) were also seated. "The Commission also is concerned about the suggestion that non-leadership legislators would be placed at various tables around the room. In its invitation, the Authority must be careful not to give the impression that the price of the ticket guarantees access to a member of the General Assembly."\textsuperscript{37}

In AO-14, the IEC expressed concern about soliciting invitations to this particular fund-raising event from corporate donors with a presumed interest in the business of the General Assembly. The Commission stated that "[t]hese actions also could be perceived as creating 'a justifiable impression' among members of the public that such (public) trust is being violated."\textsuperscript{38} "The Commission finds the appearance that access to members of the General Assembly is available for $100\textsuperscript{39} goes to the heart of concerns that gave rise to the passage of Article XXIX. The Commission is concerned that the manner of the invitation to this event is more than an appearance of impropriety. The Commission therefore encourages the Authority to exercise particular caution in

\textsuperscript{36} AO 10-07, at p. 3.
\textsuperscript{38} AO 10-14, at p. 7, reciting § 1 (1)(d) of Amendment 41.
\textsuperscript{39} The price of admission to the lunch for non-legislators.
extending invitations to anyone who might have an interest in matters pending before
the General Assembly.”

Here, the practice of directly connecting professional lobbyists and corporate donors to
legislators in arranging foursomes for a golf tournament held to raise campaign funds
for the Caucus raises a particular concern that access to legislators is being exchanged
for a donation to the Restore Fund. The suggestion that the price of the ticket to an
event guarantees access to legislators has drawn the concerning attention of the
Commission as a type of practice that compromises the public trust or that creates a
justifiable impression among members of the public that such trust is being violated. Beyond this particular practice, legislators are also cautioned about potential breaches
of the public trust or improper appearances that may be found when legislators solicit
even lawful campaign contributions from persons or entities with an interest in matters
pending before the General Assembly. While legislators are permitted to form a
political organization in order to solicit campaign contributions to the fullest extent
permitted by law, the IEC has cautioned that such otherwise legal political activity
should not be used as a means to get around Amendment 41.

40 AO 10-14, at p. 7.In AO 10-14, at pp. 8-9, the IEC warned against a public official doing any of the
following in connection with an otherwise lawful solicitation of donations to private charities or other
organizations in which such officials may be involved: 1) Soliciting or accepting gifts from professional
lobbyists and corporations; 2) Creating a situation in which it would be improper to solicit gifts from the
entity that employs the lobbyist; 3) Solicitation appeals directed at persons supporting legislation then
pending before the General Assembly; 4) Accepting a charitable solicitation in which the ultimate
beneficiary is an individual covered by Amendment 41; 5) The personal solicitation of ticket purchases
by members of the General Assembly; 6) Seating legislators at various tables around a room at a charity
event to assure they will sit with those who bought tickets to an event; and 7) Creating the appearance of
a climate in which interested parties donate to the organization in exchange for support of legislation.

41 Under section 1 (1)(c) of Amendment 41, covered officials are urged to avoid such conduct.

42 Id. Although it would not violate the literal terms of the gift bans under Amendment 41 for a covered
official to accept a gift from any one person (other than a professional lobbyist) with an interest in
legislation as long as the value of all gifts from any person in a calendar year does not exceed $65, even
a covered official accepting a lawful gift needs to be mindful of the legal duty never to accept anything
from any person that compromises the public trust and/or creates a justifiable impression among
members of the public that such trust is being violated. In addition, professional lobbyists are not
permitted to give anything to a covered official of any value, without exception. Section 3 (4) of
Amendment 41.

43 AO 10-07, at p. 5.
Conclusion

Although Amendment 41 excepts campaign contributions from the definition of "gift" or "thing of value" for purposes of the gift limitation, there is no blanket "safe harbor" from its requirements for activity undertaken for political fundraising purposes. Amendment 41 fails to provide much guidance as to how legislators may undertake political fund-raising activities in a manner that comports with the gift limitations and restrictions on conduct that may breach the public trust or that creates a justifiable impression among members of the public that such trust is being violated. For additional guidance on these issues beyond this memorandum, you may wish to obtain an advisory opinion from the Independent Ethics Commission. The IEC's response to such a request would be a public document.