

AGENDA ITEM

For meeting of January 25, 2017

SUBMITTED LATE

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 23, 2017

MEMORANDUM

TO: Commissioners

THROUGH: Alec Palmer *awp/for*
Staff Director

FROM: Greg Scott *Greg Scott GS*
Assistant Staff Director
Office of Communications
Information Division

Kathy Carothers *KC*
Communications Specialist
Office of Communications
Information Division

SUBJECT: Approval of Payment for Travel Expenses

SPONSORS: National Electoral Council

OFFICIAL INVITATION EXTENDED TO/ACCEPTED BY:

- The agency pursuant to 31 U.S.C. § 1353.
- An agency employee pursuant to 5 U.S.C. § 4111.
- An agency employee pursuant to 5 U.S.C. § 7342.
- An agency employee requested by another Federal agency.
(e.g. short term appearance, detail, speech)

PERMISSIBLE CATEGORY FOR ACCEPTING PAYMENT:

In accordance with the above, payment for **travel related expenses** will be made by:

A nonfederal entity

A State, county or municipal government

A foreign entity

Another federal agency

CONFLICT OF INTEREST REVIEW:

Payment is permissible based on a review by the Alternate Designated Agency Ethics Official pursuant to 41 C.F.R. §304-5.3. (See attached.)

FEC SPEAKER: Commissioner Ann M. Ravel

DATES: February 16-20, 2017

LOCATION: Ecuador

EVENT: Participating as an international election observer in the Ecuadorian electoral process



FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

January 19, 2017

MEMORANDUM

TO: Katherine Carothers
Communications Specialist

FROM: Tracey L. Ligon
Attorney and Deputy Ethics Official

SUBJECT: Commissioner Ravel's Invitation to Observe Ecuador's General Election

The purpose of this memorandum is to address whether an employee of the Federal Election Commission (FEC) may accept travel expenses from a non-Federal source without violating the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct).

Background

Commissioner Ann Ravel has been invited by the National Electoral Council of the Republic of Ecuador (the "Council") to observe Ecuador's general election that will take place on February 19, 2017. The dates of travel would be February 16 to 20, 2017. The Council has offered to pay for Commissioner Ravel's airfare, lodging, internal travel, and meals.

Accepting Travel from a Non-Federal Source

Section 1353 of Title 31, United States Code permits agencies to accept, under certain conditions, gifts from non-federal sources of expenses for official employee travel. The Federal Travel Regulation (FTR) addresses acceptance of these payments. Acceptance is permissible if:

- (1) the agency determines that the travel is in the interest of the government, 41 C.F.R. § 304.5.1(b);
- (2) the agency determines that the travel relates to the employee's official duties, 41 C.F.R. § 304-5.1(c); and
- (3) there is no "conflict of interest under § 304-5.3." 41 C.F.R. § 304-5.1(d).

This test in turn asks whether "acceptance of the payment under the circumstances would cause a reasonable person with knowledge of the facts relevant to [the] particular case to question the integrity of agency programs or operations." 41 C.F.R. § 304-5.3(a). When making

this determination, the approving official must be guided by all relevant considerations, including but not limited to the identity of the non-Federal source; purpose of the meeting; identity of other expected participants; nature and sensitivity of any matter pending at the agency which may affect the interest of the non-Federal source; significance of the employee's role in any such matter; and monetary value and character of the travel benefits offered by the non-Federal source.

In addition, Congress has for several years included a provision in each annual Financial Services and General Government Appropriation Act – the appropriation act that funds the Commission – providing that notwithstanding 31 U.S.C. § 1353, no agency funded by that Act may accept payment of travel expenses from any non-Federal source “subject to regulation” by that agency, unless the source is a nonprofit organization operating under Section 501(c)(3) of the Internal Revenue Code. Pub. L. 113-235, Division E, § 616 (2014). We have interpreted that provision as meaning that the entity actually conducts activities that are subject to Commission regulation, and not merely that the entity is potentially subject to Commission regulation.

Pursuant to Commission Directive 30, the Commission itself must make the determination that acceptance of travel expenses is permissible under Section 1353, based on advice by the Designated Agency Ethics Official. We focus here on whether there is a “conflict of interest under § 301-5.3” and whether the inviting entity conducts activities “subject to regulation” by the Commission; we leave to the Commission’s policy judgment whether the proposed travel is in the interest of the government and relates to the employee’s official duties.

Analysis of Conflict of Interest under 41 C.F.R. § 304-5.3 and the Financial Services and General Government Appropriations Act

Appearance concerns will always play an important role in the decision to accept a gift. The event is sponsored by the National Electoral Council of the Republic of Ecuador, which does not seek official agency action, do or seek to do business with the FEC, conduct activities regulated by the agency or have interests affected by the performance or nonperformance of the employee’s official duties. As a result, it is unlikely that a reasonable person with knowledge of the relevant facts might question the FEC accepting travel expenses for this trip.

This particular occasion is covered under 31 U.S.C. § 1353. Under the applicable rules, this is considered a gift to the agency and not the employee. Based on our review, we believe that payment for airfare, lodging, internal travel and meals for Commissioner Ravel while she is attending this event raises no conflict of interest pursuant to 41 C.F.R. § 304-5.3. Moreover, because the entity does not conduct activities regulated by the agency, acceptance would not violate the Financial Services and General Government Appropriations Act.

Quito, 11 de enero de 2017

Doctora
Ann Ravel
Magistrada de Iberoamérica
Presente.-

De mi consideración:

Luego de extenderle un cordial y atento saludo, pongo en su conocimiento que el Consejo Nacional Electoral del Ecuador, en cumplimiento del mandato constitucional y de sus atribuciones legales, organiza, dirige, vigila y garantiza los comicios generales, previstos para el próximo 19 de febrero de 2017 en todo el territorio nacional y en el exterior, proceso en el que la ciudadanía elegirá a su Presidenta o Presidente y Vicepresidenta o Vicepresidente de la República; cinco (5) Representantes al Parlamento Andino; quince (15) Asambleístas Nacionales, ciento dieciséis (116) Provinciales y seis (6) del Exterior. En el mencionado proceso se llevará a cabo además, la Consulta Popular sobre Paraísos Fiscales, aprobada mediante Decreto Ejecutivo Nro. 1269.

Al respecto, de conformidad con los artículos 169 y siguientes de la Ley Orgánica Electoral y de Organizaciones Políticas de la República de Ecuador – Código de la Democracia, en concordancia con el Reglamento de Observación Electoral aprobado por el Pleno del Consejo Nacional Electoral, la institución que presido se encuentra organizando el proceso de Observación Electoral Internacional que se llevará a cabo con ocasión de los antes mencionados comicios, con el objetivo de fomentar la transparencia del proceso eleccionario e impulsar un ejercicio objetivo e imparcial de comprensión y evaluación de todas las fases del proceso, en procura del perfeccionamiento del sistema electoral, razón por la cual el CNE apreciará en alto grado, su participación como observadora electoral internacional, en calidad de indelegable, presencia que dará realce al desarrollo del Proceso Electoral ecuatoriano.

En este sentido, los gastos correspondientes a tickets aéreos, hospedaje, alimentación y traslados internos, serán cubiertos por este organismo electoral, recalcando que cualquier modificación de fecha y/u hora en el itinerario de vuelo emitido, correrá por parte de cada participante. Cabe mencionar que la fecha de llegada será el 14 y el retorno el 20 de febrero del año en curso.



REPÚBLICA DEL ECUADOR
CONSEJO NACIONAL ELECTORAL

PRESIDENCIA

Agradeceré la confirmación de asistencia de ser posible hasta el 21 de enero de 2017, al correo electrónico relainter.ecuador@gmail.com, o comunicarse al teléfono 5932 - 3815410 ext. 861 / 343 de la Dirección Nacional de Relaciones Internacionales e Interinstitucionales, luego de lo cual se le enviará la logística correspondiente.

Seguros de contar con su valiosa presencia, hago propicia la ocasión para reiterar a usted, los sentimientos de mi distinguida consideración.

Atentamente,

J.P. Pozo



Dr. Juan Pablo Pozo Bahamonde

PRESIDENTE DEL CONSEJO NACIONAL ELECTORAL DE LA REPÚBLICA DEL ECUADOR