

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

April 22, 2020

The Honorable Cathrynn N. Brown
Representative - District 55
1810 North Guadalupe Street
Carlsbad, New Mexico 88220
Rep.Brown@winstream.net

The Honorable James G. Townsend
Representative – District 54
69 W. Compress Road
Artesia, New Mexico 88210
townsend@pvt.net

Re: Opinion Request – Educational Program Exception under the New Mexico Gift Act

Dear Representatives Brown and Townsend:

You have asked for confirmation that the educational programs Holtec International (“Holtec”) hopes to provide to members of the New Mexico Legislature regarding its proposed consolidated interim storage facility in southeastern New Mexico falls within the educational program exception to the New Mexico Gift Act, NMSA 1978, Sections 10-16B-1 to -4 (2007, as amended through 2020).[1] More specifically, Holtec is contemplating transporting small groups of legislators from various parts of New Mexico to its Callaway Nuclear Generating Station facility near Reform, Callaway County, Missouri, where over the course of two days the legislators would observe and receive detailed information about Holtec’s operations, structure, environmental protection and safety measures, and general business practices. Holtec proposes to cover the costs of air travel, meals, refreshment and lodging for its guest legislators, the cost of which would exceed \$250 per legislator. In addition to the above, you also have asked for guidance regarding whether legislators participating in such educational trips would be required to report the cost of these trips in the campaign finance reports as in-kind donations.

As noted in your request, the Attorney General previously has opined that educational trips by state legislators to tour uranium enrichment plants in the Netherlands and in Eunice, New Mexico both were permissible under the “bona fide educational program” exception of the Gift Act. *See* Att’y Gen. Advisory Letter to Representatives William Gray and Shirley Taylor from Attorney General Gary K. King and Assistant Attorney General Zachary Shandler (June 5, 2007), and Att’y Gen. Advisory Letter to Senators Carroll H. Leavell and Gay. G. Kearnan (August 10, 2015). Because the definition of “gift” has not been amended since the Gift Act was enacted in 2007, the analyses articulated in the Attorney General’s 2007 and 2015 advisory letters still applies, and

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Holtec's proposed two-day programs will fall within the bona fide educational program exception if, in your judgment, the programs are directly related to your official duties as legislators.

With regard to whether legislators participating in bona fide educational programs are required to report the cost of these programs as in-kind donations on their campaign finance reports, the answer necessarily depends on whether Holtec's contribution may be characterized as made for a political purpose. The Campaign Reporting Act, NMSA 1978, §§ 1-19-25 to -37 (1979, as amended through 2020) defines "contribution" in relevant part as a "a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is *made or received for a political purpose*, including payment of a debt incurred in an election campaign." §1-19-26(H) (emphasis added). It further defines "political purpose" as "for the purpose of supporting or opposing a ballot question or the nomination or election of a candidate." §1-19-26(S). To the extent the programs being offered by Holtec are for the purpose of informing members of the New Mexico Legislature about the interim storage facility that it intends to build in southeastern New Mexico and not for the purpose of supporting the nomination, election or re-election of any members running for office, the costs associated with such programs need not be characterized or included as in-kind donations on their campaign finance reports.

Please be advised that this opinion is a public record, not subject to the attorney-client privilege. As such, we may provide copies to the public. If this office may be of further assistance, or if you have any questions regarding the matters discussed herein, please do not hesitate to contact our office.

Sincerely,



Sally Malavé
Assistant Attorney General

[1] Under NMSA 1978, § 10-16B-2(B)(9), "gift" does not include "(9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties".