



Colorado Automobile Dealers Association

***** DEALER ACTION ALERT *****
Amendment #41 creates new compliance issues

TO: CADA Members
FROM: Tim Jackson
RE: Amendment #41 - Impact on Dealer Operations in Colorado
Date: December 27, 2006

Amendment #41, conveniently disguised as an “Ethics in Government” amendment, was promoted as a way to limit lobbying activities at the Colorado state capitol. However, its language goes far beyond that. Amendment #41 is potentially so broad and sweeping that it will limit or eliminate traditionally-accepted dealer activities in local Colorado communities. It bans gifts to public officials, including government employees at state, county and local levels, as well as gifts to independent contractors who provide goods or services to governmental agencies. The ban also extends to immediate family members (living at home), spouses and dependent children of all of the people subject to Amendment #41, an estimated 500,000-plus of Colorado’s 4.6 million residents.

This memo is not intended to answer all questions dealers may have about Amendment #41. CADA does not have answers for many of the myriad questions raised prior to passage of the amendment or since. Instead, this memo is intended to provide basic information to help guide decisions by dealers between the time the Governor signs the amendment and the time an ethics commission is established and becomes enabled to issue advisory opinions. Hopefully, many of the questions that public officials and the general public have will be answered by these advisory opinions. Until then, we cannot fully know how Amendment #41 will impact dealership operations.

Ultimately, each dealership’s management team will need to review the language of Amendment #41 (over 2,000 words) and weigh the impact of the amendment on the dealership’s operations. The following are *‘frequently asked questions’* (FAQs) we anticipate and/or have already received at CADA from dealership personnel:

QUESTION: Who is covered by Amendment #41?

ANSWER: All state, county and local government employees (estimated to include 183,000 Coloradans), as well as their spouses and dependent children living at home (estimated to increase covered Coloradans to more than 500,000), and all independent contractors doing business with any of those same governmental units (cities, counties and state). This would mean a dealership with a sales, service or parts-providing contract would thereby become a covered-entity by the definitions provided within the constitutional amendment. That could essentially increase the number of Coloradans covered by the gift ban to over one million.

QUESTION: When does Amendment #41 go into effect?

ANSWER: Colorado Governor Bill Owens is expected to sign Amendment #41 some time during the week of December 26th. However, enabling legislation required to be passed by the Colorado General Assembly and a yet-to-be created ethics commission, will probably not be in place for another four to six months.

QUESTION: What activities/actions does Amendment #41 prohibit?

ANSWER: The amendment states, “no public officer, member of the General Assembly, local government official or government employee, either directly or indirectly, as the beneficiary of a gift or thing of value given to such person’s spouse or dependent child, shall solicit, accept, or receive any gift or other thing of value having either a fair-market value or aggregate actual cost of more than fifty dollars (\$50) in any calendar year, including but not limited to gifts, loans honoraria, travel, entertainment, or special discounts, from a person without the person receiving lawful consideration of equal or greater value in return from the public officer, member of the General Assembly, local government official or government employee who solicited, accepted, or received the gift or other thing of value.”

QUESTION: What traditional dealership practices may be jeopardized by Amendment #41?

ANSWER: Although much remains up in the air regarding specific practices, we believe dealerships should consider the impact of Amendment #41 toward each described below. This list of possible situations is neither exhaustive nor complete. If you have questions about specific dealership practices, please call CADA or your outside legal counsel.

- Providing vehicle(s) to a university, college or high school athletic department.
- Loaning convertibles for use in parades.
- Loaning new or used vehicles for hauling passengers or moving equipment.
- Inviting a spouse or family members (who work for government agencies) of the dealership's employees to company holiday events or providing staff incentive activities to such persons. One time annual events for such persons are permitted so long as the aggregate value to the person is less than \$50.
- Providing manufacturer rebates or discounts to anyone covered by the amendment.
- Providing scholarships or other financial assistance to anyone covered by the gift ban.
- Selling parts to a government entity which may result in the dealership itself being treated as a “covered” person under Amendment #41

QUESTION: Will enabling legislation passed by the Colorado General Assembly in 2007 limit or mitigate the reach of Amendment #41?

ANSWER: While some people, including attorneys working with sponsors, have said that enabling legislation by the Colorado Legislature will change the meaning of the words contained in Amendment #41, the amendment itself contradicts that notion. Amendment #41 states, “Legislation may be enacted to facilitate the operation of this article, but in no way shall such legislation limit or restrict the provisions of this article or the powers herein granted.”

CADA will continue to monitor the evolving situation created through voter-passage of Amendment #41 and provide updates to dealers as we gain additional information.