

# COLORADO INDEPENDENT ETHICS COMMISSION ANNUAL REPORT 2013

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Matt Smith, Chair

Rosemary Marshall, Vice Chair

Bob Bacon, Commissioner

William J. Leone, Commissioner

Bill Pinkham, Commissioner

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Jane T. Feldman, Executive Director

## Background

The Colorado Independent Ethics Commission (“IEC” or “Commission”) was created by a voter-initiated constitutional amendment. This amendment, commonly referred to as “Amendment 41,” passed with over 62% of the vote, and became effective on December, 31, 2006 as Article XXIX of the Colorado Constitution. The IEC is authorized to implement and enforce Article XXIX. The Article, section 5, provides:

*The purpose of the independent ethics commission (sic) shall be to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions on ethics issues arising under this article, and any other standards of conduct and reporting requirements as required by law.*

The IEC has jurisdiction over all employees and elected officials in the legislative and executive branches of state government, as well as employees and elected officials of county and municipal governments that are not home rule entities and which do not have their own ethics ordinances. Local governments may adopt their own ethics laws, but those laws must be more stringent than Article XXIX. The Commission does not have jurisdiction over employees and elected officials of special districts or school districts.

The Commission consists of five members, appointed as follows: one member is appointed by the Colorado House of Representatives, one by the Colorado Senate, one by the Governor, and one by the Chief Justice of the Colorado Supreme Court. The fifth commissioner is selected by the other four members of the IEC and must be a local government employee or elected official.

Commissioners serve without compensation but are reimbursed for actual and necessary expenses incurred in carrying out their official duties. Commissioners are appointed to four-year terms and may be reappointed. No more than two commissioners may be from the same political party.

The IEC held its first meeting on December 11, 2007. Originally physically located within the Office of Administrative Courts at the Department of Personnel and Administration, the IEC's offices were moved to the Judicial Department in 2010 pursuant to HB 1404. The Commission's offices moved to the new Ralph Carr Judicial Center in December 2012.

The members of the Commission in 2013 were: Matt Smith, chair, Rosemary Marshall, vice chair, Bob Bacon, William J. Leone, and Bill Pinkham. Dan Grossman and Sally H. Hopper completed their terms in June 2013.

The work of the Commission on its constitutionally-mandated mission to issue advice and hear complaints is summarized below. In addition, Commission staff responds to open records requests pursuant to the Colorado Open Records Act ("CORA"), C.R.S. § 24-72-10, conducts trainings of state and local employees and officials, and answers informal questions from covered individuals, the press and public.

## Advisory Opinions

The Commission issued ten opinions in 2013. One advisory opinion request was withdrawn, and two requests were pending at the end of the calendar year. The opinions issued were:

Advisory Opinion 13-01 (Solicitation of Funds) This opinion addressed whether a covered individual could solicit for a criminal defense fund. (05/06/13)

Advisory Opinion 13-02 (Acceptance of Travel Expenses) This opinion addressed the acceptance of travel reimbursement for speaking at a conference) (02/15/13)

Advisory Opinion 13-03 (Acceptance of Travel Expenses) This opinion addressed the acceptance of travel expenses to various conferences) (04/08/13)

Advisory Opinion 13-04 (Mileage Reimbursement) This opinion addressed the acceptance of mileage reimbursement. (04/08/13)

Advisory Opinion 13-05 (conflict of interest) This opinion addressed whether a current state employee had a conflict of interest in the lease of property to the State of Colorado. (10/22/13)

Advisory Opinion 13-07 (Solicitation of Funds) This opinion provided guidance to a public employee regarding the solicitation of funds for a blind trust to help defray the employee's daughter's medical expenses. (04/08/13)

Advisory Opinion 13-08 (Travel) This opinion addressed the acceptance of travel expenses. (04/08/13)

Advisory Opinion 13-09 (Use of Personal Funds) This opinion addressed whether there was a conflict of interest or an appearance of impropriety in using personal funds for travel under specific circumstances. (04/08/13)

Advisory Opinion 13-11 (Travel) This opinion addressed the acceptance of travel expenses. (07/01/13)

Advisory Opinion 13-12 (Travel) This opinion addressed the acceptance of travel expenses. (08/05/13)

## Complaints

The Commission received 14 complaints in 2013. Eight complaints were dismissed as frivolous. One complaint was initially found non-frivolous, but was dismissed as frivolous after further investigation. One complaint was dismissed for lack of jurisdiction. One non-frivolous complaint was pending at the end of the calendar year. Three complaints were awaiting a frivolous determination. The Commission conducted three hearings during 2013; (Complaints 12-06, 12-07 and 13-07). Two cases, 12-06 and 13-07 were dismissed after a hearing and a violation was found in Complaint 12-07. The Commission assessed a fine and an appeal of that case is pending in Denver District Court.

A summary of the Commission's work to date is attached as Appendix A.

## Other Activities

The Commission was the defendant in two lawsuits filed in Denver District Court. The first, Gessler v. Grossman et al., 2013CV030421 challenged the IEC's authority to proceed on the investigation of a complaint. The court denied Plaintiff's motion for a temporary restraining order and a preliminary injunction. The complaint proceeded through the IEC's process and the case is now pending as an appeal of the Commission's decision. The second case, Gessler and Staiert v. Grossman et al. 2013CV031590 challenged the IEC's delay in issuing advisory opinions. That case was dismissed with prejudice on July 18, 2013.

In April 2013, the Joint Budget Committee approved the Commission's request to hire a second employee. The hiring process will be finalized in early 2014.

The Commission received and responded to 27 requests pursuant to the Colorado Open Records Act ("CORA").

The IEC completed its move to the Ralph Carr Justice Center and is now housed in Suite 210 in that building.

## Conclusion

2013 was a busy year for the Commission, but despite its heavy workload, the IEC managed to issue advisory opinions and handle complaints in a timely manner.

## Appendix

Year	Mtgs.	Opinions				Complaints	Hearings	CORA Requests	Trainings	Informal advice calls
		AO	LR	PS	Total Opinions					
2008	24			3	3	4	0	4	2	57
2009	25	9	5	7	21	14	1	8	6	@175
2010	20	16	2	1	19	9	3	12	7	@150
2011	13	12		1	13	12	1	9	34	82
2012	13	9	1	2	12	7	2	13	14	75
2013	21	10			10	14	3	27	4	232
Total	116	56	8	11	78*	60	10	73	67	771

### LEGEND:

**AO** = Advisory Opinion

**LR** = Letter Ruling

**PS** = Position Statement

\*Total Opinions do not reflect opinions withdrawn by the requestor (1 in 2012 and 1 in 2013)

Meetings include all in person meetings and telephonic meetings. @= estimated calls - official records not maintained