

COLORADO INDEPENDENT ETHICS COMMISSION

ANNUAL REPORT 2016

Matt Smith, Chair
April Jones, Vice-Chair
Bob Bacon, Commissioner
William Leone, Commissioner
Jo Ann Sorensen, Commissioner¹

Dino Ioannides, 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 more than 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 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. The IEC also has jurisdiction over employees and elected officials of county and municipal governments, except for home rule county or municipal governments that “have adopted charters, ordinances, or resolutions that address the matters covered by [Article XXIX].” Colo. Const. Art. XXIX, Sec. 7. 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 located in the Office of Administrative Courts at the Department of Personnel and Administration, the IEC’s offices were moved to the Judicial

¹ Commissioner Leone served as Chairman, and Commissioner Bacon as Vice-Chairman, through April 3, 2017, when Commissioners Smith and Jones were elected to those offices, respectively.

Department in 2010 pursuant to HB 10-1404. The Commission's offices moved to the new Ralph Carr Judicial Center in December 2012.

The members of the Commission in 2016 were: William J. Leone, Chair; Bob Bacon, Vice-Chair; April Jones; Matt Smith; and Jo Ann Sorensen. Commissioner Sorensen was appointed as the local government representative commissioner on September 13, 2016. Mr. Dino Ioannides began his service as the Commission's Executive Director in March, 2016.

The work of the Commission 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, as applicable; 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 seven advisory opinions in 2016. One advisory opinion request (requested in 2015) remained pending at the end of the calendar year. The advisory opinions issued were:

Advisory Opinion 15-12 (Application of Ethics Code to State Employees Serving as Elected Officials). This opinion *will address* whether a state employee who is elected to a city council position in a home rule municipality remains subject to the provisions and restrictions of Article XXIX. *Pending.*²

Advisory Opinion 16-01 (Acceptance of Travel Expenses Paid by a Third Party). This opinion addressed whether it would be a violation of Article XXIX for the Executive Director of the Department of Revenue to accept travel expenses paid for by a nonprofit organization. (02/09/2016)

Advisory Opinion 16-02 (Reimbursement of Travel Expenses by a For Profit Entity). This opinion addressed whether it would be a violation of Article XXIX for the Governor of Colorado to accept reimbursement from General Electric of travel expenses incurred by the Governor and his staff. (04/04/2016)

Advisory Opinion 16-03 (Acceptance of Travel Expenses Paid by a Third Party). This opinion addressed whether it would be a violation of Article XXIX for the Executive Director of the Department of Revenue to accept travel expenses paid for by a nonprofit organization. (03/03/2016)

Advisory Opinion 16-04 (Acceptance of Travel Expenses Paid by a Non-Profit Third Party). This opinion addressed whether it would be a violation of Article XXIX for the Executive Director of the Department of Revenue or a designee to accept travel expenses paid for by a nonprofit organization. (05/02/2016)

Advisory Opinion 16-05 (Conflict of Interest). This opinion addressed the avoidance of real and perceived conflicts of interest when voting on or debating questions that affect the personal, private, or financial interests of a local government official. (06/30/2016)

² Advisory Opinion 15-12 was issued on January 23, 2017, due to the pendency of Position Statement 16-01 (*see infra*) for most of 2016.

Advisory Opinion 16-06 (Acceptance of Gifts). This opinion addressed whether it would be a violation of Article XXIX for the Child Protection Ombudsman to continue to accept a fellowship first awarded prior to her appointment as the Ombudsman. (12/19/2016)

Advisory Opinion 16-07 (Acceptance of Travel Expenses Paid by a Third Party). This opinion addressed whether it would be a violation of Article XXIX for the Executive Director of the Department of Revenue to accept travel-related expenses paid for by a nonprofit organization. (12/19/2016)

Letter Rulings

The Commission issued four letter rulings in 2016. One letter ruling request was withdrawn and no letter ruling requests remained pending at the end of the calendar year. The letter rulings issued were:

Letter Ruling 16-01 (Former Legislator Advocating to a Current Legislator). This opinion addressed whether it would be a violation of Article XXIX for a former legislator, who is not a registered lobbyist, to request a current legislator to oppose a federal taxation issue and to support a citizens' initiative. (04/04/2016)

Letter Ruling 16-02 (Acceptance of Waiver of Registration Fee). This opinion addressed whether it would be a violation of Article XXIX for elected officials and their staff to accept a waiver of registration fees for the 2016 Rocky Mountain Energy Summit. (06/30/2016)

Letter Ruling 16-03 (Acceptance of Gifts—Judicial). This opinion addressed whether it would be a violation of Article XXIX for a member of the state's judicial branch to accept a gift of appreciation for service on the board of a non-profit entity. (05/02/2016)

Letter Ruling 16-04 *Withdrawn*

Letter Ruling 16-05 (Jurisdiction over Special Districts). This opinion addressed whether the employees, directors, and officers of the Regional Transportation District are subject to the provisions of Article XXIX. (December 19, 2016)

Position Statements

The Commission issued one position statement in 2016:

Position Statement 16-01 (Home Rule Counties and Municipalities). This opinion addressed the applicability of Article XXIX to home rule counties and municipalities. (12/19/2016)

Complaints

Of the complaints received in 2015 (the prior year), 21 were resolved in 2016. Seventeen were dismissed as frivolous. Four were resolved by issuance of a final order after hearing.

The Commission received 27 complaints in 2016. Of those, two complaints were withdrawn, 20 were dismissed as frivolous, one was dismissed for lack of jurisdiction, one was dismissed as untimely, and three remained pending at the end of the calendar year.

Other Activities

In January, 2016, the IEC hired its new Executive Director, Dino Ioannides, who began working for the IEC in March, 2016.

In 2015, the Office of the State Auditor commenced an audit of the IEC. The report was released in March, 2016, and made eight audit recommendations. The full report, including the Commission's responses, may be obtained at <https://leg.colorado.gov/audits/independent-ethics-commission>.

On April 25, 2016, the Colorado Supreme Court issued its decision in *Colo. Ethics Watch v. Indep. Ethics Comm'n*, 2016 CO 21, 369 P.3d 270 (Colo. 2016). The Court reaffirmed that the IEC is not an executive agency, but an independent, constitutionally created commission separate and distinct from the executive and legislative branches. The Court held that the General Assembly may not encroach upon the IEC's decisions not to enforce; that the judicial review provisions of § 24-18.5-101(9), C.R.S., do not apply to the IEC's frivolity dismissals; and that the IEC's decision to dismiss a complaint as frivolous is not subject to judicial review.

On June 20, 2016, the Colorado Supreme Court granted the Petition for Writ of Certiorari in *Gessler v. Indep. Ethics Comm'n*, 2015SC462. The Court will consider (1) whether the Independent Ethics Commission has jurisdiction under the phrase "any other standards of conduct" in Article XXIX; (2) whether the phrase is unconstitutionally vague; and (3) whether procedural due process requires pre-hearing notice to explain how laws are violated. Oral argument is scheduled for June 8, 2017.

Among its other activities in 2016, the IEC also updated its complaint form and made it available for electronic completion and submission, issued a new edition of its informational handbook, and adopted a code of conduct applicable to the IEC and its staff.

Conclusion

The Commission received 27 complaints in 2016, which, although down from a high of 35 complaints the prior year, represented a 66% increase over the IEC's annual average. The Commission's remaining workload was generally within the normal historical range. *See Appendix.*

Appendix

Year	Meetings	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	0	1	13	12	1	9	34	82
2012	13	9	1	2	12	7	2	13	14	75
2013	21	10	0	0	10	14	3	27	4	232
2014	21	17	2	0	19	24	1	19	3	@110
2015	12	12	2	1	15	35	3	10	19	133
2016	18	7	4	1	12	27	4	6	1	@97
Total	167	92	16	16	124	146	18	108	90	1111

LEGEND:

AO = Advisory Opinion

LR = Letter Ruling

PS = Position Statement

@ = estimated calls (official records not maintained)

Meetings include all in person meetings and telephonic meetings.