

# COLORADO INDEPENDENT ETHICS COMMISSION

## ANNUAL REPORT 2017

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Matt Smith, Chair  
April Jones, Vice-Chair  
William Leone, Commissioner  
Gary Reiff, Commissioner  
Jo Ann Sorensen, Commissioner

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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 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 2017 were: Matt Smith, Chair; April Jones, Vice-Chair; William J. Leone; Gary Reiff; and Jo Ann Sorensen. Matt Smith is the appointee of the chief justice. April Jones is the appointee of house of representatives. Commissioner Leone is the appointee of the senate.<sup>1</sup> Commissioner Reiff is the appointee of the governor. Commissioner Sorensen is the local government representative commissioner and is the appointee of the other four commissioners. Mr. Dino Ioannides is the Commission's executive director.

The work of the Commission to issue advice and hear complaints is summarized below. In addition, Commission staff 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 eight advisory opinions in 2017.<sup>2</sup> Four advisory opinion requests were withdrawn. One advisory opinion request 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 addressed 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.

Advisory Opinion 17-03 (Government Meeting Space Expenses Paid by a Third Party). This opinion addressed whether it would be a violation of Article XXIX for a member of the Colorado General Assembly (a) to serve as a moderator and participant in a community meeting, and (b) to host town hall meetings.

Advisory Opinion 17-04 (Conflict of Interest, Local Government Official). This opinion addressed whether it would be a violation of Article XXIX or the statutory standards of conduct for a county commissioner to continue serving as a director on the board of a transportation authority.

Advisory Opinion 17-05 (Negotiations for Future Employment). This opinion addressed whether it would be a violation of Article XXIX for a state employee to seek outside employment with a subcontractor of a private prison corporation.

Advisory Opinion 17-06 (Negotiations for Future Employment). This opinion addressed whether it would be a violation of Article XXIX for a state employee to seek outside employment with a private prison corporation.

Advisory Opinion 17-08 (Acceptance of a Scholarship from Nonprofit Entities and Government Exchange Organization). This opinion addressed whether it would be a violation of Article XXIX for a local government official or government employee to accept a waiver of conference fees from a government exchange organization, non-profit organizations, and the for-profit company hosting the conference.

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<sup>1</sup> Previously appointed by the governor, Commissioner Leone was reappointed by the senate effective July 1, 2017. See SR17-004. Commissioner Robert Bacon was the previous senate appointee, whose term ended on June 30, 2017.

<sup>2</sup> Including Advisory Opinion 15-12, which was issued on January 23, 2017.

Advisory Opinion 17-10 (Conflict of Interest and Appearance of Impropriety). This opinion addressed whether it would be a violation of Article XXIX to serve as county assessor or county treasurer and public trustee, while maintaining employment in the mortgage loan origination industry.

Advisory Opinion 17-11 (Acceptance of Travel and Lodging Expenses). This opinion addressed whether it would be a violation of Article XXIX for a member of the Colorado General Assembly to accept the payment of travel and lodging expenses by Adams State University to deliver a commencement address for the university.

### Letter Rulings

The Commission issued one letter ruling in 2017. One letter ruling request was withdrawn and no letter ruling requests remained pending at the end of the calendar year. The letter ruling issued was:

Letter Ruling 17-02 (Subsequent Employment or Contract). This opinion addressed whether it would be a violation of § 24-18-201(1), C.R.S., for a former state employee to contract consulting services to entities that contract with the state.

### Position Statements

The Commission issued no position statements in 2017.

### Complaints

Of the complaints received in 2016 (the prior year), five were resolved in 2017. Three were dismissed as frivolous. Two were resolved by issuance of a final order after hearing. One complaint received in 2016 remained pending at the end of 2017.

The Commission received 50 complaints in 2017. Of those, five complaints were withdrawn, 36 were dismissed as frivolous, and nine remained pending at the end of the calendar year.

### Other Activities

On June 20, 2016, the Colorado Supreme Court granted the Petition for Writ of Certiorari in *Gessler v. Indep. Ethics Comm'n*, 2015SC462. On June 8, 2017, the Court heard oral arguments. The Court has not issued an opinion to date. The issues before the Court are (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.

### Conclusion

The Commission received 50 complaints in 2017, which represents more than a 250% 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 | Records 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                   |
| 2017         | 11       | 8        | 1  | 0  | 9              | 50         | 2        | 4                | 6         | 205                   |
| <b>Total</b> | 178      | 100      | 17 | 16 | 133            | 196        | 20       | 112              | 96        | 1316                  |

**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.