

COLORADO INDEPENDENT ETHICS COMMISSION

ANNUAL REPORT 2018

April Jones, Chair
Jo Ann Sorensen, Vice-Chair
Elizabeth Espinosa Krupa, Commissioner
William Leone, Commissioner
Matt Smith, Commissioner

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 2018 were: April Jones, Chair; Jo Ann Sorensen, Vice-Chair; Elizabeth Espinosa Krupa (who replaced Commissioner Gary Reiff after his resignation); William J. Leone; and Matt Smith. Commissioner Jones is the appointee of house of representatives. Commissioner Sorensen is the local government representative commissioner and is the appointee of the other four commissioners. Commissioner Espinosa Krupa is the appointee of the governor. Commissioner Leone is the appointee of the senate.¹ Commissioner Smith is the appointee of the chief justice. 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 three advisory opinions in 2018. One advisory opinion request was withdrawn. No advisory opinion requests remained pending at the end of the calendar year. The advisory opinions issued were:

Advisory Opinion 18-01 (Travel Expenses). This opinion addressed whether a state employee could accept travel and related expenses from a private corporation to attend the corporation's tax symposium and participate in a panel at the conference.

Advisory Opinion 18-02 (Travel Expenses Paid by a Foreign Government). This opinion addressed whether a member of the Colorado General Assembly could accept travel-related expenses from a foreign government to attend an educational program known as the Rising State Leaders Program.

Advisory Opinion 18-03 (Travel Expenses Paid by a Foreign Government). This opinion addressed whether a state employee could accept travel-related expenses from a foreign government to attend an overseas training course related to public private partnerships.

Letter Rulings

The Commission issued no letter rulings in 2018 (none were requested).

Position Statements

The Commission issued no position statements in 2018.

Complaints

Of the complaints received in 2017 (the prior year), three were resolved in 2018. Two were dismissed as frivolous. One was resolved by issuance of an order dismissing the complaint before hearing. One complaint received in 2016 remained pending at the end of 2018.

¹ 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.

The Commission received 37 complaints in 2018. Of those, 29 complaints were dismissed as frivolous, three were dismissed for lack of jurisdiction, and five remained pending at the end of the calendar year.

Other Activities

On June 4, 2018, the Colorado Supreme Court issued its *en banc* decision in *Gessler v. Indep. Ethics Comm'n*, 2018 CO 48, 419 P.3d 964. In affirming the Court of Appeals, the Colorado Supreme Court held, *inter alia*, that: (1) the reference in Colo. Const. art. XXIX, sec. 5, to the Commission's authority to hear complaints under "any other standards of conduct ... as provided by law" means ethical standards of conduct relating to activities that could allow covered individuals to improperly benefit financially from their public employment; (2) section 24-18-103, C.R.S., establishes an ethical standard of conduct subject to the Commission's jurisdiction; and (3) because the allegations against the Secretary of State clearly implicated the standard in section 24-18-103, C.R.S., the complaint fell within the Commission's jurisdiction. In arriving at this holding, the Court rejected the Secretary's argument that the Commission's jurisdiction under art. XXIX, sec. 5, is limited to provisions expressly delegating enforcement authority to the Commission.

Conclusion

The Commission received three requests for advisory opinions in 2018 (issuing opinions for all three), which represents about one-third of the Commission's annual average. On the other hand, the Commission received 37 complaints in 2018, representing a 75% increase over the Commission'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
2018	12	3	0	0	3	37	1	8	5	115
Total	190	103	17	16	136	233	21	120	101	1431
Avg	17.3	9.4	1.6	1.5	12.4	21.2	1.9	10.9	9.2	130
Median	18	9	1	1	12	14	2	9	6	115

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.