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Dino Ioannides, *Executive Director*

Advisory Opinion 17-06 (Negotiations for Future Employment)

Summary: It would not be a violation of Article XXIX for an employee of the Colorado Department of Corrections to seek outside employment with a private prison corporation under the facts and circumstances presented in the request.

I. Background

Requester is an employee of the Colorado Department of Corrections (CDOC). She serves in a relatively high-level management position that provides leadership, support, and oversight to correctional facilities, to ensure safe, secure, and humane operations in her delegated institutions. A critical function is collaboration with other leadership in CDOC to enhance corrections programs and re-entry efforts.

The GEO Group is a private entity government contractor providing correctional, detention, community reentry, rehabilitation, and electronic monitoring services. The GEO Group provides full service corrections management for a prison located in Colorado Springs, Colorado. The GEO Group announced a position for a Senior Area Manager, focusing on offender rehabilitation and evidence-based treatment integrated with post-release support services. Requester has applied for the position but has not received an offer of employment from the GEO Group.

Requester has kept the Director of Prisons (DOP) informed about her interest in the position announced by the GEO Group. In correspondence with the Commission, the DOP confirms the background information provided by Requester and believes it would be a benefit to both the CDOC and the citizens of Colorado to have a former CDOC employee such as the Requester in a critical correctional leadership position for a private prison corporation.

The CDOC's Private Prison Monitoring Unit (PPMU), over which Requester has supervisory authority, is responsible for the monitoring and auditing of Colorado's private prison contracts. Nonetheless, the DOP indicates that Requester's employment with a private prison corporation would not create a conflict of interest, the appearance of impropriety, and no issues for the CDOC or its stakeholders.

According to the DOP, contracts and intergovernmental agreements for private prisons are

negotiated by CDOC staff other than the Requester. The Requester has not participated in contract negotiations, nor does Requester's work assignment include reviewing, writing, or negotiating contracts or intergovernmental agreements. Requester's work assignment does not involve PPMU auditing functions and Requester does not have regulatory decision-making authority to influence the outcome of contracts.

The DOP states that Requester would not be improperly influenced in the course and scope of her current CDOC assignment by applying for the position with the GEO Group. The DOP indicates that the Requester, if offered a position with the GEO Group, would not have the ability to take advantage of matters in which she was directly involved during her employment with the CDOC. Requester's employment with CDOC does not impart confidential information giving her an unfair advantage, nor make her more qualified for the position inasmuch as it is posted as an open-competitive announcement. Requester would have no personal financial interest with GEO Group other than as a compensated employee if she were hired. The Requester's employment with the GEO Group would have no effects on CDOC's fiscal relationship with the GEO Group.

II. Jurisdiction

The requester is a "government employee" subject to the Commission's jurisdiction. Colo. Const. Art. XXIX, § 2(1).

III. Applicable Law

The purposes and findings of Section 1 of Colo. Const. Art. XXIX state, in pertinent part:

- (a) The conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people;
- (b) They shall carry out their duties for the benefit of the people of the state;
- (c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated;
- (d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust...

Section 3(2) of Colo. Const. Art. XXIX states as follows [emphasis added]:

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 greater than fifty dollars (\$50) in any calendar year, including but not limited to, gifts, loans, rewards, **promises or negotiations of future employment**, favors or services, 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.

Section 24-18-201(1), C.R.S., states, in pertinent part:

...A former employee may not, within six months following the termination of his employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment...

IV. Discussion

Promises or Negotiations of Future Employment

In Position Statement 09-03 the Commission clarified that most employment related offers and negotiations are not prohibited by § 3(2) of Article XXIX. Section 3(2) only prohibits negotiations or promises of future employment for public officials and employees that are not supported by lawful consideration of equal or greater value. Most negotiations and offers of employment, such as the one in question in this case involving only compensated employment, are supported by mutual consideration in the form of the prospective employer's promise to provide compensation to the prospective employee and the prospective employee's promise to provide services to the prospective employer.

Position Statement 09-03 applied a two-prong test to determine if the employment arrangement would violate § 3(2) of Article XXIX: (1) whether the remuneration that is being offered to the public official or employee is appropriate or patently excessive; and (2) whether the offer or solicitation is made in circumstances indicative of a conflict of interest.

As pertaining to the first prong, Requester advises that pay for the new position is expected to be between \$110,000 and \$120,000 per year. By comparison, Requester currently makes approximately \$137,000 per year. The Commission finds that remuneration for the new position is not patently excessive.

As for the second prong, the CDOC indicated that Requester does not currently review, write, or negotiate contracts with private prison corporations. Nor does she have the authority to influence the outcome of contracts with private prison corporations. The CDOC believes there would be no conflict of interest, and the Commission finds there are no circumstances indicative of a conflict of interest. In evaluating conflicts of interest, we have repeatedly stated, "In general, absent clear facts to the contrary, the Commission is inclined to rely on the position of the state agency involved, given their superior understanding of the duties performed by the state employee involved."¹

The Public Trust

The purposes and findings of § 1 of Article XXIX highlight the importance of maintaining the

¹ Letter Ruling 10-02. See also Letter Ruling 14-02 (citing Letter Ruling 10-02 in circumstances where the state agency expressed conflict of interest concerns).

public trust. The Commission interprets the term “public trust” to mean that government employees and officials shall carry out their duties for the benefit of the people of the State of Colorado, which includes an ongoing duty of loyalty to the State in seeking outside employment.

In this instance, Requester has been transparent with the CDOC about her plans to seek outside employment. The Commission reminds Requestor that she must continue “preserving her duty to her employer at every stage of the employment seeking process.”²

The Six-Month Prohibition of § 24-18-201, C.R.S.

Section 24-18-201, C.R.S., mandates that a former employee may not, within six months following the termination of her employment, be employed by an employer who contracts with a state agency “involving matters with which [she] was directly involved during her employment.” If the Requester is ultimately hired by the GEO Group, the question is whether the six-month mandatory waiting period would apply.

In this case, both the Requester and the CDOC DOP indicated that the Requester is not involved with the contracting or auditing processes of CDOC’s PPMU. Moreover, the GEO Group’s announcement for a Senior Area Manager focuses on offender rehabilitation and evidence-based treatment integrated with post-release support services. Though Requester’s current duties are indirectly related to the functions of the Senior Area Manager position, they cannot be said to be “directly involved” within the meaning of § 24-18-201, C.R.S. Requester’s current duties ensure safe, secure, and humane operations in her delegated institutions; and include collaboration with other leadership in CDOC to enhance corrections programs and re-entry efforts. Her current duties do not involve *implementation* of rehabilitation, evidence-based treatment, or post-release support services.

Because the Requester’s current duties do not directly involve the Senior Area Manager duties required by the GEO Group, the six-month mandatory waiting period does not apply.³

V. Conclusion

It would not be a violation of Article XXIX for Requester to seek outside employment under the facts and circumstances presented in the request.

The Commission cautions that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission therefore encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

² Advisory Opinions 13-13, 14-20, and 15-04.

³ See Advisory Opinion 10-08 (finding that a professor teaching accounting was not directly involved in the accounting practices and procedures used by the educational institution).

The Independent Ethics Commission

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Dated: July 24, 2017

Commissioner William J. Leone, recused