



March 27, 2017

Via Email Only

Bill Leone
Chair, Independent Ethics Commission
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***Re: Draft Position Statement Regarding Implementation of Position Statement
16-01 (Home Rule Counties & Municipalities)***

Dear Commissioners:

Colorado Common Cause ("CCC") submits these comments to the Independent Ethics Commission (the "Commission") regarding the Commission's draft position statement regarding the implementation of Position Statement 16-01 concerning the Commission's jurisdiction over home rule municipalities. CCC is uniquely positioned to comment on this issue as the primary drafter of Amendment 41 and as a member of Coloradans for Clean Government, the coalition that sponsored Amendment 41.

Common Cause is a nonpartisan, nonprofit organization that is dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government that serves the public interest, and empowering ordinary people to make their voices heard in the political process.

As noted in our previous comments to the Commission (dated April 4, 2016 and August 3, 2016), CCC disagrees with the Commission's belief that the only way a home rule municipality may exempt itself from Article XXIX is by adopting an ethics code that precisely mirrors the provisions of Article XXIX. If that were the intent, Amendment 41 would have omitted the home rule exemption altogether or created an exemption that was narrowly focused on the creation of a local enforcement entity. Instead, Amendment 41 required municipalities to "address the matters covered in [Article XXIX]." CCC does not believe that Position Statement 10-01 is consistent with the language in Colo. Const. art. XXIX, § 7.

CCC believes that there are significant issues with Position Statement 10-01 and the proposed position statement to implement it (the submission by Colorado Ethics Watch details the extensive procedural problems that would exist if the position statement were adopted in its current form).

Having reviewed the other comments submitted to the Commission, CCC concurs with the comments submitted by Colorado Ethics Watch dated March 27, 2017. We join with Colorado

Ethics Watch in urging the Commission to begin a formal rulemaking process to amend its Rules of Procedure to include the changes to the complaint process in light of Position Statement 10-01.

Colorado Common Cause appreciates the Commission's interest in providing clarity regarding the interpretation of the home rule exemption of Article XXIX. However, we believe the procedures proposed in the draft position statement will have the opposite effect. By making the determination regarding a home rule municipality's compliance with Position Statement 10-01 a determination that occurs in executive session, there will be ongoing confusion for both home rule entities and those who are seeking to file complaints. The Commission should be transparent in its determinations regarding jurisdiction. We also share the concerns of Colorado Ethics Watch regarding the burden of proof: it should be the duty of the entity to show that its process is consistent with the requirements of the Commission, not the complainant's duty to show that it is not.

All affected parties should have clarity about whether the Commission has determined that the home rule entity is subject to the Commission's jurisdiction. CCC does not support the process proposed by the position statement. If an entity has not "address[ed] the matters" of Article XXIX, the Commission must handle complaints from that jurisdiction just as they would any other local government. If an entity has "address[ed] the matters" of Article XXIX, the Commission has no role in the handling of ethics complaints for covered individuals of that local government. It is beyond the Commission's scope established in Article XXIX for the Commission to review the rulings made by properly established local ethics boards.

CCC is concerned that the Commission's Position Statement 10-01 and draft position statement regarding its implementation are in conflict with Article XXIX of the Colorado Constitution. While we appreciate the Commission's desire to ensure that there are high ethical standards in place for government officials and employees at all levels of government throughout the state, we do not believe that these position statements achieve the intended goal.

Thank you for the opportunity to comment.

A handwritten signature in dark ink, appearing to read "E Nunez", with a long horizontal stroke extending to the right.

Elena Nunez
Executive Director