

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 18-08

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN THE MATTER OF: JULIE COZAD

This matter comes before the Independent Ethics Commission (“Commission”) on a complaint filed by Charles Parks, Jr. (“Complainant”) against Julie Cozad, a county commissioner for Weld County, Colorado. Complainant alleged violations of §§ 24-18-109 and 18-8-308, C.R.S., for Commissioner Cozad’s vote on an item regarding which she had an alleged conflict of interest on March 7, 2018. In its Notice of Issues for Hearing, the Commission set forth the issues for hearing, which included an alleged conflict of interest under section 24-18-109(3)(a), C.R.S., and breach of the public trust under section 24-18-103, C.R.S., over which the Commission has jurisdiction pursuant to section 5(1) of Article XXIX of the Colorado Constitution.

On April 22, 2019, the Commission held an evidentiary hearing and deliberated on the merits of the case in public. The Commission has determined that Ms. Cozad violated section 24-18-109(3)(a), C.R.S., when she voted on a matter in which she had a personal or private interest. Specifically, by voting in favor of a consent agenda which included a warrant payment to herself for payment of \$12,268.57 in legal fees that she incurred defending a separate ethics complaint before this Commission, Ms. Cozad breached her fiduciary duty and the public trust. The Commission finds that no penalty should be imposed pursuant to section 6 of Article XXIX of the Colorado Constitution.

I. Findings of Fact

1. At an October 2017 Weld County Board of Commissioners work session, Ms. Cozad requested that Weld County hire outside counsel to represent her in defending Complaint 17-28, an ethics complaint filed with this Commission in July 2017 that is currently stayed for reasons unrelated to the instant complaint.

2. Ms. Cozad had been informed by the Weld County attorney, Bruce Barker, that he could not represent her because he would be representing the county's interests in Complaint 17-28 by briefing the jurisdictional issue of whether Weld County is exempt from the requirements of Article XXIX as a home rule entity. Colo. Const. art. XXIX, sec. 7.

3. Ms. Cozad's request for the county to cover her legal fees was limited to briefing of the jurisdiction issue, not the substantive allegations against her.

4. Because one commissioner, Sean Conway, opposed Ms. Cozad's request, she withdrew that request and proceeded to hire legal counsel on her own.

5. On October 31, 2017, Ms. Cozad retained Jason Dunn of Brownstein Hyatt Farber Schreck, LLP ("Brownstein") to represent her.

6. Ms. Cozad terminated her retention of Mr. Dunn's legal services after this Commission asserted jurisdiction over Complaint 17-28 on February 12, 2018.

7. Ms. Cozad paid a total of \$12,268.57 in legal fees to Brownstein, all of which were paid by personal check.

8. In or about February 2018, Ms. Cozad approached the Weld County attorney again and showed him the Brownstein invoices she had received and paid.

9. Ms. Cozad testified that Mr. Barker agreed that Weld County should cover her attorney's fees for litigation of the home rule issue.

10. At a February 26, 2018 work session of the Weld County Board of Commissioners, Mr. Barker requested that the Board pay for Ms. Cozad's legal fees incurred during Brownstein's representation.

11. Ms. Cozad left the room and went to her office during the portion of the work session at which her legal fees were discussed, and Mr. Barker came to her office afterwards to tell her that the Board had agreed to pay for her legal fees.

12. Ms. Cozad stated that it was her understanding the Board would have to vote on such payment at a regularly scheduled meeting.

13. The regular procedure for reimbursement of expenses incurred by commissioners on behalf of Weld County was to fill out a reimbursement form.

14. Ms. Cozad did not fill out a reimbursement form, but did provide the Brownstein invoices and copies of her personal checks to Mr. Barker.

15. The payment of Ms. Cozad's legal fees was placed on the consent agenda for the March 7, 2018 Weld County Board of Commissioners meeting.

16. The agenda for that meeting included a "Warrant Register.",

17. The Warrant Register catalogs a check made out to "Julie Ann Cozad" in the amount of \$12,268.57

18. Ms. Cozad received the Warrant Register the evening prior to the March 7, 2018 meeting.

19. Ms. Cozad stated she did not review the Warrant Register portion of the consent agenda prior to the March 7, 2018 meeting.

20. The Warrant Register is signed by Ms. Cozad and the other commissioners who were in attendance at the March 7, 2018 meeting.

21. The minutes of the March 7, 2018 meeting reflect that the consent agenda, including approval of the payments set forth on the Warrant Register, was approved unanimously.

22. Ms. Cozad did not recuse herself from voting on the consent agenda.

23. The Weld County Board of Commissioners has a procedure for removing an item from the consent agenda and voting on that item as a standalone agenda item, and that procedure is triggered by any commissioner's request to vote on an item separately.

24. Ms. Cozad did not request that payment of her legal fees be removed from the consent agenda and voted on as a standalone agenda item.

25. Ms. Cozad testified that she received a check from Weld County in the amount of \$12,268.57 sometime after the March 7, 2018 Weld County Board of Commissioners meeting.

26. On September 26, 2018, the Weld County Board of Commissioners voted 3-1 (with Ms. Cozad recused) in favor of passing a resolution to "reapprove and confirm [the] reimbursement of legal expenses in the amount of \$12,268.57 to Commissioner Julie A. Cozad by and through Weld County warrant number 3331998 on March 7, 2018."

27. At the time of the September 26, 2018 resolution, Ms. Cozad had already been paid the amount of \$12,268.57 by Weld County.

II. Conclusions of Law

a. Jurisdiction

1. Ms. Cozad is a county commissioner and thus, a “local government official” within the meaning of Section 2 of Article XXIX of the Colorado Constitution.

2. On or about November 7, 2017, the Weld County voters approved Ballot Question 1B, which became Section 16-9 of the Weld County Charter.

3. That provision provided that, regardless of Weld County’s status as a home rule entity, all elected officers and employees of Weld County were subject to Article XXIX of the Colorado Constitution.

4. In her jurisdictional brief, filed on December 6, 2018, Ms. Cozad conceded that Ballot Question 1B was intended to, and did, cede jurisdiction over ethics matters to this Commission.

5. Accordingly, Ms. Cozad was subject to the Commission’s jurisdiction at the time of the events in question.

6. Ms. Cozad is subject to the “standards of conduct” set forth in sections 24-18-109(3)(a) and 24-18-103, C.R.S. Colo. Const. art. XXIX § 5(1).

7. The IEC has jurisdiction over ethical “standards of conduct”, including those set forth in Article 18 of Title 24. *Gessler v. Smith*, 419 P.3d 964, 975 (Colo. 2018).

b. Section 24-18-109(3)(a), C.R.S.

8. Section 24-18-109(3)(a), C.R.S., provides that a local government official “who has a personal or private interest in any manner proposed or pending before the government body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.”

9. The IEC finds that Ms. Cozad had a “personal or private interest” in the payment of her legal fees. Regardless of whether those fees are characterized as a “reimbursement”, the underlying ethics complaint, Complaint 17-28, was filed against Ms. Cozad, not Weld County. She selected the firm and attorney to represent her, and signed the representation agreement. She received and paid Brownstein’s invoices, which were in her name alone. The practical effect of the County’s vote to pay for her legal fees was that Ms. Cozad received \$12,268.57 in funds that she would not have otherwise received. She certainly had a particularized pecuniary interest in Weld County’s payment of that amount. *See Russell v. Wheeler*, 439 P.2d 46, 47 (Colo. 1968).

10. The IEC finds that Ms. Cozad voted on the matter in which she had a personal or private interest by voting to approve the consent agenda at the March 7, 2018 meeting.

11. Ms. Cozad's failure to read the Warrant Register on the consent agenda is not a mitigating factor since she knew that approval of her legal expenses would need to occur at a regularly scheduled meeting and knew that the Board had discussed such payment at its most recent work session.

12. The fact that Weld County later passed a resolution to "reapprove and confirm" payment of Ms. Cozad's legal expenses did not cancel out her earlier vote. Ms. Cozad had already voted on a matter in which she had a personal or private interest, and it is that conflict of interest that constitutes an ethical violation. While Weld County may have intended that the resolution "substitute[] for and take[] the place of" its earlier action, it could not retroactively cure Ms. Cozad's statutory violation.

13. The IEC makes no findings regarding the propriety of Weld County's decision to reimburse Ms. Cozad's legal fees. The IEC is concerned only with Ms. Cozad's failure to recuse herself from voting to pay herself \$12,268.57. That vote, which was on a matter in which she had a personal or private interest, violated section 24-18-109(3)(a), C.R.S.

c. Section 24-18-103, C.R.S.

14. Section 24-18-103, C.R.S. provides that local government officials "shall carry out [their] duties for the benefit of the people of the state" because the holding of public office is a public trust. *Id.* A local government official whose conduct departs from her fiduciary duty is liable to the people of the state as a trustee of property and shall be liable for abuse of the public trust. *Id.*

15. Section 24-18-103, C.R.S., "establishes an ethical standard of conduct subject to the IEC's jurisdiction." *Gessler*, 419 P.3d at 967.

16. Because the Commission finds a violation of section 24-18-109(3)(a), C.R.S., the Commission declines to find a separate violation of section 24-18-103 for the same conduct.

d. Penalty

17. The IEC finds that no monetary penalty is appropriate for Ms. Cozad's violation of section 24-18-109(3)(a), C.R.S. First, section 24-18-109(3)(a) does not mandate a specific penalty. Nevertheless, the Colorado Constitution requires additional analysis because it requires that any local government official who breaches the public trust for private gain shall be

liable to the state or local jurisdiction for double the amount of the financial equivalent of any benefits obtained by such actions. Colo. Const. art. XXIX, § 6. For the IEC to impose a penalty under this requirement, Ms. Cozad's actions must have both: (1) constituted a breach of the public trust for private gain; and (2) resulted in a benefit that was "obtained by such actions." *Id.* A violation of section 24-18-109(3)(a) undoubtedly constitutes a breach of one's fiduciary duty and the public trust. § 24-18-109(1), C.R.S. However, there is no indication that the benefit Ms. Cozad received here—payment of her legal fees—was obtained by her actions. Given Weld County's ratification of this payment and its steadfast position that this payment was ultimately made to defend the County's view of the home rule jurisdiction issue, we cannot find that Ms. Cozad's action in voting on the consent agenda resulted in her receiving payment of her legal fees. In short, there is an insufficient causal relationship between Ms. Cozad's breach of trust and the payment of her legal fees.

THEREFORE, the Commission finds, by a preponderance of the evidence that Ms. Cozad violated section 24-18-109(3)(a), C.R.S. The Commission finds that no penalty is warranted.

The Independent Ethics Commission

Elizabeth Espinosa Krupa, *Chair*

April Jones, *Commissioner*

Matt Smith, *Commissioner*

Jo Ann Sorensen, *Commissioner*

DATED: June 24, 2019