

LIBERTY AND JUSTICE FOR ALL

Colorado Independent Ethics Commission Ethics Handbook

3rd ed., 2016



The IEC is an independent commission, created by Article XXIX of the Colorado Constitution, which is committed to advancing ethics in government.

Table of Contents

Introduction	2
IEC Website	3
Appointment of Commissioners	3
Activities of the IEC	4
a. Guidance and Advice.....	4
b. Adjudication of Complaints.....	5
IEC Jurisdiction	6
a. Personal Jurisdiction	6
b. Subject Matter Jurisdiction	7
Appendix A: Colorado Constitution Article XXIX – Ethics in Government.....	12
Appendix B: Useful Contacts	22

Introduction

The Independent Ethics Commission (“IEC” or “the Commission”) was formed as a result of a voter initiated and approved constitutional amendment in 2006. The amendment, commonly referred to as “Amendment 41”, became Article XXIX of the Colorado Constitution. *See Appendix A.*

The IEC is independent of the three branches of government and is charged with interpreting Article XXIX and other ethics rules as they apply to “covered individuals.” Covered individuals include any employee of the state executive or legislative branch, a state agency, a public institution of higher education, or any local government. Elected officials at the state and local level are also covered. The provisions of Article XXIX may not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by the amendment. *See the IEC website for current information on this topic.*

The IEC’s mission is to give “advice and guidance on ethics issues arising under this Article and any other standards of conduct or reporting requirements as provided by law, and to hear complaints, issue findings and assess penalties and sanctions as appropriate.” *Article XXIX, Sec. 5(1).*

This handbook provides an overview of what the IEC does, how the IEC helps raise awareness of ethics issues within government, and how the IEC provides guidance to public employees faced with ethics questions. The information herein is presented as informational reference only and is not intended to state a legal position or provide legal guidance. For information relating to individual

questions or concerns, please seek guidance from www.colorado.gov/iec or contact the IEC staff.

IEC Website

The IEC website contains useful information for both the casual inquirer and the researcher. The links contained in the website include information about commission rules, meeting agendas and minutes, announcements, commissioner biographies, answers to frequently asked questions (FAQs), instructions for filing a complaint, and IEC opinions for complaints, position statements, advisory opinions, and letter rulings. You may access the IEC website at www.colorado.gov/iec.

Appointment of Commissioners

There are five volunteer commissioners on the IEC. One member is appointed by the Speaker of the State House of Representatives, one by the President of the State Senate, one by the Governor, one by the Chief Justice of the Colorado Supreme Court, and collectively those four commissioners select the fifth. Commonly known as the “fifth commissioner”, this individual must be a local government employee or elected official.

The two commissioners chosen by the House Speaker and the Senate President must be confirmed by a two thirds vote in their respective chambers. Commissioners serve staggered four year terms and may serve multiple terms if they are reappointed. While the commissioners are volunteers, they are reimbursed for reasonable expenses primarily related to their travel.

Activities of the IEC

a. Guidance and Advice: The IEC provides advice to government employees and officials and to members of the public relating to the provisions of Article XXIX and applicable state ethics statutes and rules. The IEC provides this advice through the issuance of Advisory Opinions to covered individuals, Letter Rulings to individuals outside government, and Position Statements, which are policy statements initiated by the IEC on issues falling within its jurisdiction. All of the IEC's decisions are available on the IEC's website at www.colorado.gov/iec.

Advisory Opinions are written opinions issued by the IEC addressing an ethics question posed by someone who is a public official or employee and who is covered by the IEC's jurisdiction. These opinions provide guidance about conduct that has not yet occurred, for instance whether an elected official may accept the gift of travel to attend a conference that will take place on a future date.

Letter Ruling requests are written opinions issued by the IEC addressing ethics issues posed by someone who is not a public official or employee and who is not covered by the IEC's jurisdiction. These rulings are provided as guidance about conduct that has not yet occurred, for instance whether an organization may permissibly offer free tickets to an event to members individuals covered by Article XXIX.

Position Statements are IEC-initiated written opinions addressing broad ethics issues, frequently asked questions, or topics of widespread interest or

concern. These statements offer general guidance for public employees and officials, and are an informational resource for the public.

Additionally, covered individuals and members of the public are invited to contact the IEC staff at any time with questions or concerns. While staff information is intended to be educational in nature and is not binding on the IEC, it may be helpful in identifying issues or concerns, and may be useful in providing guidance.

- b. *Adjudication of Complaints:*** Additionally, the IEC reviews formal ethics complaints and may investigate and conduct hearings. If a violation is found, the IEC may enter formal findings regarding the violation and, where appropriate, impose a monetary fine.

Complaints may not be anonymous; they must be submitted on the appropriate complaint form (available on the IEC website) and must be signed. Complaints may be filed by anyone regarding the conduct of a public official or employee. All complaints are reviewed by the IEC. Under Article XXIX, the IEC meets in closed session to determine whether the complaint is *frivolous* (not within IEC jurisdiction, not alleging an ethics violation, not occurring within the prior twelve months, etc.) or *non-frivolous*. *Frivolous* complaints remain confidential and are not publicly disclosed. *Non-frivolous* complaints are publicly disclosed and investigated.

IEC Jurisdiction

a. Personal Jurisdiction

State Government Employees and Officials – pursuant to Article XXIX the IEC has jurisdiction over elected officials and employees of the state executive and legislative branches of government. Employees of public institutions of higher education are also covered by IEC jurisdiction. Independent contractors working for the executive or legislative branches of government may fall within the purview of Article XXIX, depending on their responsibilities.

Municipal and County Employees and Officials – under Article XXIX, the IEC generally has jurisdiction over elected officials and employees of municipal and county governments.¹

Judicial Branch Employees, Boards and Commissions, and Special Districts – the IEC does not have jurisdiction over judges and employees of the judicial branch; nor does it have jurisdiction over members of boards and commissions who do not receive a salary. Additionally, the IEC does not have jurisdiction over employees of special districts (for example parks and recreation districts or school districts.)

¹ The IEC may not have jurisdiction over elected officials and employees of home rule counties or municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by Article XXIX. See Section 7 of Article XXIX and associated IEC opinions.

b. Subject Matter Jurisdiction

Pursuant to Article XXIX, the IEC has jurisdiction over the “gift ban.” Covered individuals are prohibited from accepting a gift valued in excess of \$59 (originally \$50, adjusted for inflation every four years) from any person in any calendar year, with limited exceptions. Gifts may take many forms and can include travel, discounted purchases, favorable loan conditions, etc. Many decisions by the IEC address the issue of whether a given item qualifies as a gift for purposes of Article XXIX. If an individual pays for an item, or otherwise provides consideration, the giving of value in exchange for a thing of value, the item may not qualify as a gift. While family members of covered individuals generally do not fall within the jurisdiction of the IEC, if a gift is given to a spouse or child, it may be prohibited by Article XXIX.

For purposes of Article XXIX, gifts may include:

- Money;
- Forgiveness of debt;
- Loans;
- Rewards;
- Travel (with some exceptions);
- Promises of future employment (in certain circumstances);
- Favors and services;
- Some forms of honoraria;
- Entertainment; or
- Special discounts not available to others.

Exceptions to the gift ban may include:

- Campaign contributions;
- Unsolicited items of trivial value (pen, desk set, notepad, calendar, etc.);
- Unsolicited tokens of appreciation (plaque, trophy, etc.);
- Admission to and the cost of food and beverages at a reception, meal or meeting when the individual is participating as a speaker or presenter;
- Travel to conventions or meetings when the offer is made *ex officio*, is related to the person's official duties, is of benefit to the state, the individual is representing the state, or the state pays dues to the sponsoring organization (other exceptions may apply depending on circumstances);
- Gifts from relatives and friends; or
- Bonuses or other incentives or compensation paid in the course of employment.

It should be noted that lobbyists shall not give a gift of any value to a covered individual unless the official or employee is a member of the lobbyist's immediate family.

Many of the IEC's opinions address the issue of travel, which is considered a gift for purposes of Article XXIX. Typically, whether a government official may accept payment for travel from an outside source will depend on several factors including:

- the type of entity paying for the trip (nonprofit v. for profit);
- whether the offer is to a specific person in his or her individual capacity, or to a designee of a government entity or agency;

- whether the offer is made *ex officio*;
- whether the event relates to the public duties of the individual;
- whether there exists, or there is the potential for, a conflict of interest or the appearance of impropriety; and
- the purpose of the trip.

Article XXIX section 5(1) also bestows jurisdiction on the IEC regarding “any other standards of conduct and reporting requirements as provided by law.” Typically “other standards of conduct” will include issues set forth in Colorado Revised Statutes (C.R.S.) Title 24, Article 18, *et seq.*, examples of which are set forth below. In some instances, matters addressed in Title 24 may also be criminal in nature; it is important to note that the IEC does not preside over criminal cases.

While the IEC reviews conduct under the “other standards” provision on a case by case basis to determine whether it has jurisdiction and whether and how to analyze a specific case, a few common examples include:

- Conflicts of interest: Although Article XXIX does not use the phrase “conflict of interest,” Section 1 states that the public should have respect for and confidence in public employees, who should “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.” Article XXIX, section 1(1)(c). To that end, public officials and employees should conduct themselves pursuant to the standards outlined in C.R.S. § 24-18-101, *et seq.*, and specifically familiarize themselves with the requirements of C.R.S. §§ 24-18-109 and 24-18-110. The IEC has also analyzed numerous matters involving questions of conflict of interest, which

are available on the IEC website. As with all issues addressed herein, if there is a question regarding conflict of interest, officials and employees are urged to consult with counsel and/or submit an advisory opinion request to the IEC.

- Appearance of Impropriety: Occasionally a situation will arise which, although legally and/or technically appropriate, may nevertheless raise concern regarding the potential for an appearance of impropriety. For instance, if a gift is given to an official or employee with decision making authority by someone with business before the entity or agency for whom that individual works, it may appear that the gift was given to influence the person in the performance of his or her official duties, even if less than \$59 and otherwise permissible under state statutes. This would give rise to the appearance of impropriety.
- Post-government employment: Government officials and employees often operate under some restrictions or requirements with regard to outside or secondary employment. Additionally, the Constitution further restricts members of the General Assembly and other statewide elected officials from serving as lobbyists for a period of two years after leaving office. Article XXIX, section 4.

All state employees should be aware that C.R.S. §§ 24-18-105(3) and 24-18-201(1) impose a six month waiting period for the acceptance of employment in which he or she will take direct advantage, unavailable to others, of matters with which he or she was directly involved while employed by the State. Employees should consult with departmental human resources staff or counsel regarding whether acceptance of an offer

of employment may be in violation of statutes or rules. Additionally, the IEC has considered and will consider requests by employees or former employees regarding these issues.

Although Article XXIX section 3(2) lists negotiation for future employment as a prohibited gift, the IEC has previously clarified that the prohibition applies only in certain circumstances and is not an outright ban on negotiations while the person remains employed by the State. These questions tend to be fact specific and are based on certain factors including whether the pay is commensurate with that received by others in comparable positions, whether the person will be unfairly utilizing advantageous position or knowledge gained in the course of state employment, etc.

It should be noted that, generally, the IEC does not have jurisdiction to consider ethics complaints regarding regulated professionals such as attorneys, doctors or other professionals who are not government employees covered by Article XXIX. Appendix B provides contacts of other agencies that might be helpful.

Appendix A: Colorado Constitution Article XXIX – Ethics in Government

Section 1. Purposes and findings.

(1) The people of the state of Colorado hereby find and declare that:

(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; and

(e) To ensure propriety and to preserve public confidence, they must have the benefit of specific standards to guide their conduct, and of a penalty mechanism to enforce those standards.

(2) The people of the state of Colorado also find and declare that there are certain costs associated with holding public office and that to ensure the integrity of the office, such costs of a reasonable and necessary nature should be borne by the state or local government.

Section 2. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "Government employee" means any employee, including independent contractors, of the state executive branch, the state legislative branch, a state agency, a public institution of higher education, or any local government, except a member of the general assembly or a public officer.
- (2) "Local government" means county or municipality.
- (3) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.
- (4) "Person" means any individual, corporation, business trust, estate, trust, limited liability company, partnership, labor organization, association, political party, committee, or other legal entity.
- (5) "Professional lobbyist" means any individual who engages himself or herself or is engaged by any other person for pay or for any consideration for lobbying. "Professional lobbyist" does not include any volunteer lobbyist, any state official or employee acting in his or her official capacity, except those designated as lobbyists as provided by law, any elected public official acting in his or her official capacity, or any individual who appears as counsel or advisor in an adjudicatory proceeding.
- (6) "Public officer" means any elected officer, including all statewide elected officeholders, the head of any department of the executive branch, and elected and appointed members of state boards and commissions. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council or

committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.

Section 3. Gift ban.

(1) No public officer, member of the general assembly, local government official, or government employee shall accept or receive any money, forbearance, or forgiveness of indebtedness from any person, without such 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 accepted or received the money, forbearance or forgiveness of indebtedness.

(2) 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.

(3) The prohibitions in subsections (1) and (2) of this section do not apply if the gift or thing of value is:

(a) A campaign contribution as defined by law;

- (b) An unsolicited item of trivial value less than fifty dollars (\$50), such as a pen, calendar, plant, book, note pad or other similar item;
- (c) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- (d) Unsolicited informational material, publications, or subscriptions related to the recipient's performance of official duties;
- (e) Admission to, and the cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or to answer questions as part of a scheduled program;
- (f) Reasonable expenses paid by a nonprofit organization or other state or local government for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local government, provided that the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities;
- (g) Given by an individual who is a relative or personal friend of the recipient on a special occasion.
- (h) A component of the compensation paid or other incentive given to the recipient in the normal course of employment.

(4) Notwithstanding any provisions of this section to the contrary, and excepting campaign contributions as defined by law, no professional lobbyist, personally or on behalf of any other person or entity, shall knowingly offer,

give, or arrange to give, to any public officer, member of the general assembly, local government official, or government employee, or to a member of such person's immediate family, any gift or thing of value, of any kind or nature, nor knowingly pay for any meal, beverage, or other item to be consumed by such public officer, member of the general assembly, local government official or government employee, whether or not such gift or meal, beverage or other item to be consumed is offered, given or paid for in the course of such lobbyist's business or in connection with a personal or social event; provided, however, that a professional lobbyist shall not be prohibited from offering or giving to a public officer, member of the general assembly, local government official or government employee who is a member of his or her immediate family any such gift, thing of value, meal, beverage or other item.

(5) The general assembly shall make any conforming amendments to the reporting and disclosure requirements for public officers, members of the general assembly and professional lobbyists, as provided by law, to comply with the requirements set forth in this section.

(6) The fifty-dollar (\$50) limit set forth in subsection (2) of this section shall be adjusted by an amount based upon the percentage change over a four-year period in the United States bureau of labor statistics consumer price index for Denver- Boulder-Greeley, all items, all consumers, or its successor index, rounded to the nearest lowest dollar. The first adjustment shall be done in the first quarter of 2011 and then every four years thereafter.

Section 4. Restrictions on representation after leaving office.

No statewide elected officeholder or member of the general assembly shall personally represent another person or entity for compensation before any other statewide elected officeholder or member of the general assembly, for a period of two years following vacation of office. Further restrictions on public officers or members of the general assembly and similar restrictions on other public officers, local government officials or government employees may be established by law.

Section 5. Independent ethics commission.

(1) There is hereby created an independent ethics commission to be composed of five members. 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 under any other standards of conduct and reporting requirements as provided by law. The independent ethics commission shall have authority to adopt such reasonable rules as may be necessary for the purpose of administering and enforcing the provisions of this article and any other standards of conduct and reporting requirements as provided by law. The general assembly shall appropriate reasonable and necessary funds to cover staff and administrative expenses to allow the independent ethics commission to carry out its duties pursuant to this article. Members of the commission shall receive no compensation for their services on the commission.

(2) (a) Members of the independent ethics commission shall be appointed in the following manner and order: (I) One member shall be appointed by the Colorado senate; (II) One member shall be appointed by the Colorado house of representatives; (III) One member shall be appointed by the governor of the

state of Colorado; (IV) One member shall be appointed by the chief justice of the Colorado supreme court; and (V) One member shall be either a local government official or a local government employee appointed by the affirmative vote of at least three of the four members appointed pursuant to subparagraphs (I) to (IV) of this paragraph (a).

(b) No more than two members shall be affiliated with the same political party.

(c) Each of the five members shall be registered Colorado voters and shall have been continuously registered with the same political party, or continuously unaffiliated with any political party, for at least two years prior to appointment to the commission.

(d) Members of the independent ethics commission shall be appointed to terms of four years; except that, the first member appointed by the Colorado senate and the first member appointed by the governor of the state of Colorado shall initially serve two year terms to achieve staggered ending dates.

(e) If a member is appointed to fill an unexpired term, that member's term shall end at the same time as the term of the person being replaced.

(f) Each member shall continue to serve until a successor has been appointed, except that if a member is unable or unwilling to continue to serve until a successor has been appointed, the original appointing authority as described in this subsection shall fill the vacancy promptly.

(3) (a) Any person may file a written complaint with the independent ethics commission asking whether a public officer, member of the general assembly, local government official, or government employee has failed to comply with this article or any other standards of conduct or reporting requirements as provided by law within the preceding twelve months.

(b) The commission may dismiss frivolous complaints without conducting a public hearing. Complaints dismissed as frivolous shall be maintained confidential by the commission.

(c) The commission shall conduct an investigation, hold a public hearing, and render findings on each non-frivolous complaint pursuant to written rules adopted by the commission.

(d) The commission may assess penalties for violations as prescribed by this article and provided by law.

(e) There is hereby established a presumption that the findings shall be based on a preponderance of evidence unless the commission determines that the circumstances warrant a heightened standard.

(4) Members of the independent ethics commission shall have the power to subpoena documents and to subpoena witnesses to make statements and produce documents.

(5) Any public officer, member of the general assembly, local government official, or government employee may submit a written request to the independent ethics commission for an advisory opinion on whether any conduct by that person would constitute a violation of this article, or any other standards of conduct or reporting requirements as provided by law. The commission

shall render an advisory opinion pursuant to written rules adopted by the commission.

Section 6. Penalty.

Any public officer, member of the general assembly, local government official or government employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state or local jurisdiction for double the amount of the financial equivalent of any benefits obtained by such actions. The manner of recovery and additional penalties may be provided by law.

Section 7. Counties and municipalities.

Any county or municipality may adopt ordinances or charter provisions with respect to ethics matters that are more stringent than any of the provisions contained in this article. The requirements of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by this article.

Section 8. Conflicting provisions declared inapplicable.

Any provisions in the statutes of this state in conflict or inconsistent with this article are hereby declared to be preempted by this article and inapplicable to the matters covered by and provided for in this article.

Section 9. Legislation to facilitate article.

Legislation may be enacted to facilitate the operation of this article, but in no way shall such legislation limit or restrict the provisions of this article or the powers herein granted.

Appendix B: Useful Contacts

Office of Attorney Regulation Counsel
(303) 457-5800
www.coloradosupremecourt.com

Commission on Judicial Discipline
(303) 457-5131
www.coloradojudicialdiscipline.com

Colorado Attorney General's Office, Consumer Hot Line
(800) 222-4444
stopfraud@state.co.us

Department of Regulatory Agencies
(303) 894-7800
www.colorado.gov/dora

Denver Ethics Board
(720) 865-8412
michael.henry@denvergov.org

Colorado Springs Ethics Commission
(719) 385-2489
cityatty@springsgov.com



Colorado Independent Ethics Commission

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