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Dino Ioannides, *Executive Director*

Letter Ruling No. 16-01

(Former Legislator Advocating to a Current Legislator)

SUMMARY: It would not be a violation of Colorado Constitution Article XXIX for a former legislator to engage in the requested conduct.

I. Background

The Independent Ethics Commission (“IEC” or “Commission”) received a request from a former state legislator asking for a letter ruling. The requestor served in the Colorado Legislature until December 31, 2014, and now is being paid to “affect public opinion.” The requestor is not a registered lobbyist pursuant to C.R.S., § 24-6-301.

The requestor is seeking answers to the following three (3) questions:

- (1) May the requestor “contact the current state legislator and ask the legislator to take a specific action related to the federal taxation issue, e.g. ask a state representative to write a letter opposing the issue?”
- (2) May the requestor “[c]ontact a current state legislator and ask him/her to support the citizens’ initiative which I am paid to promote?”
- (3) “If the answer to number 2, is no, can I present my position on the ballot initiative to citizens if a state legislator is present in the room?”

II. Jurisdiction

The IEC finds that a former state legislator, having been out of office less than 2 years is subject to the jurisdiction of the Commission. *See* Colo. Const. Art. XXIX, sec 4.

The Commission finds a Letter Ruling is appropriate in this case because the requestor is no longer a member of the General Assembly. *See* IEC Rules of Procedure 3(A)(7) and 5(B).

III. Applicable Law

Section 2 of Article XXIX (Definitions) reads in relevant part:

(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.

Section 3 of Article XXIX (Gift ban) reads in relevant part:

(4) 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.

IV. Discussion

The Commission addressed prohibited activities and professional lobbying in Position Statement 09-02. The Commission reiterated that Article XXIX, section 4 expressly prohibits elected office holders and members of the general assembly from personally representing persons or entities for compensation before statewide elected office holders or members of the general assembly for a period of two years after leaving office. Since the phrase “personally represent” was not defined in Article XXIX, the Commission went on to clarify that it “was intended to mean that elected office holders and members of the general assembly are prohibited from serving as **professional lobbyists** for two years following leaving office.” *Id.* The Commission found “professional lobbyist” is any person who is required to register as a professional lobbyist under C.R.S., § 24-6-301.” *Id.* With this background information in mind, the Commission turns to the requestor’s questions.

As to the requestor’s first question, the Commission finds the requestor may contact the current state legislator to ask the legislator to take a specific action related to the federal taxation issue, *e.g.*, ask a state representative to write a letter opposing the issue. Since the requestor is not a registered lobbyist pursuant to C.R.S., § 24-6-301, the requestor is not prohibited from this activity.

With regard to the second question the Commission finds that the requestor is not prohibited from contacting a current state legislator to ask him/her to support the citizens’ initiative which the requestor is being paid to promote. While the requestor has been out of office less than 2 years, the requestor is not a professional lobbyist and, therefore, not prohibited from engaging in this activity. This answer

makes the requestor's third question moot.

V. Conclusion

For the reasons noted above, it would not be a violation of Colorado Constitution Article XXIX for the requestor to engage in any of the noted activities listed above.

The Commission cautions public officials and employees that this opinion is based on the specific facts presented in the request and that different facts could produce a different result. The IEC, therefore, encourages individuals with particular questions to request fact specific advice for their circumstances through requests for advisory opinions or letter rulings.

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April 4, 2016