



State of Colorado

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Letter Ruling 17-02 (Subsequent Employment or Contract)

Summary: It would not be a violation of section 24-18-201(1), C.R.S., for a former high-level employee of the Colorado Department of Human Services to contract out her consulting services to entities that contract with DHS.

I. Background

Requester was previously employed as the Director of the Office of Behavioral Health by the Colorado Department of Human Services (“CDHS”), a high-level administrative position. She resigned from that position less than six months ago, and now seeks employment as an independent contractor providing consultation services to entities that contract with CDHS.

In her capacity as Director of the Office of Behavioral Health, Requester supervised the Division of Mental Health Institutes, oversaw the State’s two mental health hospitals and the Division of Community Behavioral Health, oversaw licensing activities, and oversaw mental health and substance use disorder services funded through federal block grants and state general fund appropriations. According to the Requester’s direct supervisor, the Deputy Executive Director of CDHS, the Requester’s regulatory role included presenting proposed rules and ensuring their implementation to the State Board of Human Services, as well as ensuring implementation of various statutory responsibilities. Requester was in that position for just over two years.

Prior to her position as Director of the Office of Behavioral Health, Requester was employed in the private sector in the substance use and mental health treatment provider field. Requester holds a Ph.D. and, immediately prior to her employment at CDHS, was self-employed as a consultant and independent contractor. She seeks to resume that work.

Requester’s proposed consulting work would include contracting with a managed services

organization (“MSO”)¹ that contracts with CDHS. Requester would assist with development of business practices to help the MSOs satisfy the requirements necessary to procure managed care contracts from CDHS, including satisfying changing payment and performance incentives. Additionally, Requester’s proposed consulting work would include assistance with financial and compliance reviews of mental health and substance use disorder provider organizations. Some of those providers contract with CDHS. Finally, Requester’s proposed consulting work would include contracting with community mental health centers or substance use disorder treatment providers to enhance or expand substance abuse treatment programs. Those treatment providers contract with CDHS.

The Independent Ethics Commission (“Commission”) has not reviewed any of the proposed contracts Requester seeks to enter into, but bases its analysis on the factual representations of the substance of those contracts provided by Requester. The Commission also relies on the representations of CDHS, which does not view Requester’s proposed work as creating a real or perceived conflict of interest.

II. Jurisdiction

The Commission finds that the requester was a “government employee” and therefore under the jurisdiction of the Commission pursuant to section 2(1) of Article XXIX.

III. Applicable Law

Section 5 of Article XXIX of the Colorado Constitution states in pertinent part:

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.

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

In determining whether a former employee is prohibited from contracting with an entity that contracts with the state “involving matters” with which the employee was “directly involved,”

¹ An MSO is a designated state contractor that affiliates with various substance use disorder treatment providers. The MSO is paid by CDHS through general appropriations. Their affiliated treatment providers are reimbursed through the State’s Medicaid program, which is administered through the Colorado Department of Health Care Policy and Financing.

the Commission recognizes that some overlap in job duties is permissible. Specifically, in interpreting section 24-18-201, C.R.S., the Commission looks to whether the requester would be “on the other side of the table”, so to speak, on the same matters with which he or she had been involved as a state employee. *See* Letter Ruling 14-02. The Commission frequently looks to the state employer to determine whether the former employee was “directly involved” in the matters with which he or she now wishes to contract. *See* Advisory Op. 13-13; Advisory Op. 17-06.

Both Letter Ruling 14-02 and Advisory Opinion 17-06 are particularly relevant to this request. Both involved requests from high-level government officials to contract with or seek employment from entities contracting with their employing state agency.

In Letter Ruling 14-02, the Commission found that it would likely be a violation of section 24-18-201, C.R.S., for a former high-level CDHS employee whose duties included “the development and management of all contracts with vendors for the provision of services” to contract with the organizations providing direct services. Letter Ruling 14-02 at 1-2. The employee’s desired employment would have entailed bidding for state contracts. There, his knowledge of internal processes and policy-related discussions would have given his employing entity an advantage over other non-employing entities. *Id.* at 2. Additionally, CDHS believed that requester’s desired employment would create a conflict and “adversely impact future planning related to those internal policy[-]related discussions of which requester is aware.” *Id.* at 4.

In Advisory Opinion 17-06, the Commission found that it would not be a violation of section 24-18-201, C.R.S., (or Article XXIX) for an individual in a high-level management position at the Colorado Department of Corrections to apply for a position with a private entity that contracts with the Department of Corrections. Advisory Opinion 17-06 at 1-2. The requester’s current position entailed supervisory authority over the Private Prison Monitoring Unit, which monitored and audited the state’s private prison contracts. *Id.* at 1, 4. However, the requester was not actually involved in those processes. *Id.* at 4. The requester’s desired position would entail implementation of rehabilitation, treatment, and post-release support services. *Id.* Accordingly, the Commission (and the Department of Corrections) determined that requester’s current duties did not directly involve matters on which she would be working in her desired position. *Id.* at 4.

The Commission finds that the facts in this case are more analogous to Advisory Opinion 17-06. Here, Requester’s previous position entailed administering mental health hospitals and the Division of Community Behavioral Health, overseeing licensing activities, overseeing mental health and substance use disorder services, and ensuring compliance with the State Board of Human Services rules and regulations. Her proposed responsibilities as a consultant would primarily focus on contract procurement, assistance with financial and compliance reviews, and development of substance abuse treatment programs.

Requester’s supervisor, the Deputy Executive Director at CDHS, believes that there is no conflict or potential for an unfair advantage. Specifically, the Deputy Executive Director cited the fact that the entities that the Requester would be providing consulting services to “are either designated in statute as contractors or procured through a competitive process.” The Deputy Executive Director does not believe that Requester’s role as an independent contractor for those

entities would compromise that process.

The Commission recognizes that any individual in a high-level management position with the state will oversee a broad array of subject matter within his or her area of expertise. *See* Advisory Op. 10-08 at 3 (section 24-18-201, C.R.S., did not apply because “[t]he proposed contract, although within his area of general expertise as an accountant, does not involve a matter in which he was directly involved as a professor.”). Under section 24-18-201(1), C.R.S., a state employee is only barred from employment on matters with which she was “directly involved” during her state employment. Here, although Requester oversaw execution of contracts in accordance with state procurement rules, it appears that she was not directly involved in choosing the contractors, which are either designated by statute or procured through a competitive process. *See* Advisory Op. 17-06 at 4. Similarly, while Requester oversaw mental health and substance use disorder services, it appears that she was not directly involved in the development of such programs. And, unlike the situation presented by Letter Ruling 14-02, Requester’s employment would not put entities that do not utilize her consulting services at a competitive disadvantage. Accordingly, the Commission finds that the six-month mandatory waiting period set forth in section 24-18-201(1), C.R.S., does not apply.

V. Conclusion

It would not be a violation of section 24-18-201(1), C.R.S., for Requester to contract with entities that contract with CDHS under the facts and circumstances presented in this 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.

The Independent Ethics Commission

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Dated: December 21, 2017