

State of Colorado



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INDEPENDENT ETHICS COMMISSION

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Letter Ruling 10-02 **(Entry into Contract by a Former Public Employee)**

SUMMARY: It would not be a violation of Article XXIX or any other standard of conduct under the jurisdiction of the IEC for a former employee of the Colorado Department of Health Care Policy and Financing (“HCPF”) to enter into a contract with a consulting company to provide program and management assistance on a contract with a health care provider.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for Advisory Opinion or Letter Ruling regarding the permissibility of the requestor’s entering into a contract following the termination of her employment with the state. The requestor originally submitted a request for advisory opinion pertaining to a proposed contract with another entity that was working to comply with federal regulations on an information exchange project. HCPF objected to the contract on the grounds that the contract directly related to work she had done for the State. The requestor then filed a request for advisory opinion with the IEC asking for clarification. The requestor left state employment effective June 18, 2010. Because of scheduling and other issues, the IEC was not able to render a decision regarding the propriety of that contract prior to the contract deadline. The Commission therefore asked the

requestor to submit a new request related to this contract. Because she is no longer a public employee, the correct procedure is for her to request a letter ruling.

According to the request, the requestor was a full time state employee of HCPF until June 2010. She was a Division Director, responsible for information technology issues relating to Medicaid funding. She was the contact person on all outside contracts relating to information technology issues. Since leaving state employment, she has endeavored to enter into consulting contracts in the health care field using her experience at HCPF.

The requestor currently has the opportunity to enter into a contract with a consulting company to work on project management issues relating to a major health care provider. She would be the project manager for a team that would provide business analysis, develop software, and manage programs which would assist the health care provider in complying with the federal regulations relating to in-patient diagnosis codes. This contract would impact the entire health care community, not just HCPF or Medicaid. The IEC has not reviewed the proposed contract or Statement of Work involved in this request, as neither is available at this time. The requestor stated that the consulting company was waiting to see if they could utilize her as the lead for their proposal as there would most likely be contact between the requestor and the project manager employee at HCPF.

The requestor has asked whether if this contract were effective immediately, (rather than six months after her leaving state service), this would constitute a violation of Article XXIX or any other standard of conduct under the jurisdiction of the IEC, more specifically, C.R.S. §§ 24-18-105 and 24-18-201 *et seq.*

HCPF has notified the Commission that it does not object to the requestor's participation in this contract.

II. JURISDICTION

The IEC finds that the requestor was a "government employee" and therefore under the jurisdiction of the IEC. See Article XXIX section 2(1) and the IEC Rules of Procedure Rule 5(B).

III. DISCUSSION

A. Constitution Article XXIX

There is no provision in Article XXIX that addresses this question. The only restrictions on subsequent employment contained in Article XXIX refer only to members of the General Assembly and state-wide elected officials. However, as previously stated, the Commission believes that the statements contained in Section 1, Purposes and Findings, reflect the intent of the voters and can be used as guidance in addressing whether there is a potential ethical violation or appearance of impropriety. See Position Statement 08-01 (Gifts), p. 3-4, and Advisory Opinion 09-06 (Service on the Board of a Nonprofit Entity), page 3. That section provides:

- (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.

The Commission does not believe that the contract at issue in this case would pose any violation of the “public trust” or any of the principles contained in Article XXIX.

B. Statutes

Colorado Revised Statute §24-18-105(3) concerns ethical principles for public officers, local government official or (state) employee. It reads in pertinent part:

A public officer, a local government official, or an employee should not , within six months following the termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he has directly involved during his term of employment. These matters include rules, other than rules of general application, which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

Similarly, Colorado Revised Statutes § 24-18-201 concerns proscribed acts relating to contracts and claims relating to public officials and employees. It reads in pertinent part:

(1) Members of the general assembly, public officers, local government officials, or employees shall not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. 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.

The requestor seeks advice from the Commission regarding whether the proposed contract, if effective immediately, would violate this provision. HCPF has informed the Commission that in its view this contract, unlike the previous proposed contract, would not be a conflict. In general, absent clear facts to the contrary, the

Commission is inclined to rely on the position of the state agency involved, given their superior understanding of the duties performed by the state employee involved.

IV. CONCLUSION

Based on the facts before it, the Commission finds that it would not be a violation of Article XXIX or any other standard of conduct under the jurisdiction of the IEC for the requestor to enter into this contract, under the circumstances described in the request.

The Independent Ethics Commission

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Roy V. Wood, *Commissioner*

Dated: September 13, 2010