



Cole Wist, *Chair*
Sarah Mercer, *Vice-Chair*
Elizabeth Espinosa Krupa, *Commissioner*
Lora Thomas, *Commissioner*
Daniel Wolf, *Commissioner*

Independent Ethics Commission
1300 Broadway, Suite 240
Denver CO 80203
Phone: (720) 625-5697
www.colorado.gov/iec

Dino Ioannides, *Executive Director*

DRAFT

Position Statement 23-____ (Home Rule Cities and Counties)

I. Introduction and Summary

In recent years, the Independent Ethics Commission (“IEC”) has adjudicated multiple cases involving public officials, employees, or independent contractors of home rule cities and counties (collectively, “home rule entities”). In the process, the IEC has developed a more formulaic approach to assessing its jurisdiction over those individuals than previously set forth in Position Statement 16-01 (which was unanimously rescinded by the IEC on September 19, 2023). When the IEC receives an ethics complaint against a public official, employee, or independent contractor of a home rule entity, it must assess its own jurisdiction over the complaint.

Specifically, the IEC considers four main components of Article XXIX and looks to the plain language of a home rule entity’s charter, ordinances, or resolutions to determine whether the home rule entity has “address[ed] the matters covered by [Article XXIX].”

II. Applicable Law

The provisions of Article XXIX generally apply to “local government official[s]” and “government employee[s],” including employees of “any local government.” Colo. Const. art. XXIX, § 2(1), (3); § 3. But Section 7 provides an exemption for the officials, employees, and independent contractors of certain home rule entities:

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.

Colo. Const. art. XXIX, § 7.

III. Analysis

There are four main components of Article XXIX:

- (1) a gift ban (Colo. Const. art. XXIX, § 3);
- (2) a complaint and investigative process (*id.* at § 5(3)(a), (c));
- (3) a penalty provision or discipline process (*id.* at §§ 5(3)(d), (6)); and
- (4) an independent decisionmaker (*id.* at § 5(1), (2)).¹

The IEC interprets the plain language of Section 7 to mean that a home rule entity seeking to exempt its officials, employees, and contractors from Article XXIX must “adopt” charters, ordinances, or resolutions that address each of the four main components of Article XXIX. The main components cannot be implied or assumed; they must, rather, be promulgated in the home rule entity’s charter, ordinances, or resolutions.

In determining whether a home rule entity has exempted itself from Article XXIX, the IEC looks to the plain language of a home rule entity’s charter, ordinances, or resolutions to determine whether the home rule entity has “address[ed] the matters covered by [Article XXIX].” If a home rule entity has adopted provisions addressing each of the four main components of Article XXIX, the IEC lacks jurisdiction to consider the allegations against the public official, employee, or contractor of that home rule entity. The home rule entity’s provisions may be more or less stringent than those main components of Article XXIX. The IEC will not consider the adequacy of those provisions or the home rule entity’s implementation thereof.

Local government officials and employees should take note that the statutory standards of conduct set forth in C.R.S. § 24-18-101, *et seq.*, continue to apply to them, regardless of whether their home rule entity is exempt from the provisions of Article XXIX. If a home rule entity is exempt from the provisions of Article XXIX, it is the home rule entity that has jurisdiction to adjudicate a complaint regarding violations of the statutory provisions, not the IEC.

The IEC recognizes that Section 7 authorizes home rule entities to adopt less stringent ethical standards than those set forth in Article XXIX. To the extent Section 7 impedes some of the goals of Article XXIX — “to ensure propriety and to preserve public confidence” by prohibiting “any effort to realize personal financial gain through public office,” Colo. Const. art. XXIX § 1(d)-(e) — that is a problem the voters must remedy.

This position statement is intended to give general advice to home rule entities, local government officials and employees, and the public. The IEC encourages individuals with specific questions to seek fact-specific advice through a letter ruling or advisory opinion request.

¹ “Independent” means that, at a minimum, the subject of an ethics complaint cannot participate in deciding ethics complaints filed against him or herself.