

Comments by Jane T. Feldman in opposition to IEC's Proposed Position Statement 23-__ on IEC's Jurisdiction over Home Rule Cities and Municipalities.

I submit these comments in opposition to the IEC's proposed Position Statements in my personal capacity. I note, however, that I was the Executive Director of the IEC from 2008-2014 and served on the Denver Board of Ethics in 2015, and again since 2019 to the present day. I am currently serving as the Vice Chair of the Denver Board of Ethics. I have also represented several cities and counties within the State of Colorado either as conflicts counsel on ethics issues, or in assisting these entities in drafting and/or revising municipal and county laws, rules, regulations, and policies regarding government ethics. I am therefore familiar with the variety of processes and procedures, structures, definitions, and matters addressed in several municipalities and counties, both home rule and not.

The IEC's proposed Position Statement seems to be geared towards pre-empting the Denver Code of Ethics and its Board of Ethics as well as those ethics programs in other home rule entities. This was never the intention of the drafters of Article XXIX and was never discussed in either the Blue Book or at any of the hearings conducted by the Office of Legislative Legal Services prior to the placing of Amendment 41 on the ballot. The fact that Article XXIX draws a distinction between home rule and other entities suggests that the amendment was not intended to supersede ethics procedures in place in home rule entities or created thereafter.

The Denver Board of Ethics was created in 2000, over 7 years before the first meeting of the IEC and 8 years before the IEC issued its first Position Statement. Denver's Code of Ethics ("Code") covers all the matters proscribed in the Position Statement, except that the Board lacks enforcement authority. The Board can make recommendations to the supervisors of employees.

Some of the provisions of the current version of the Code are more stringent than the IEC's enabling statute, and some are less. Denver's Code, moreover, addresses several issues not covered either in Article XXIX, or in C.R.S. §§24-18-24-101 *et seq.* including nepotism in hiring and supervision, outside employment, required training and more detailed rules regarding subsequent employment. The Denver Board of Ethics has developed a considerable body of advisory opinions on these and other issues in the 23 years since its inception. Employees and officials of the City and County of Denver are familiar with these rules and interpretations. In addition, the Denver Code of Ethics has strict timelines on processing of complaints, responding to advisory opinion requests, and a two-year statute of limitations. The Board also accepts anonymous complaints which meet certain guidelines. Thus, the Denver Code of Ethics addresses matters not within the purview of the IEC. The Denver Board of Ethics has been working with the Denver Auditor and the Denver City Council to address the enforcement issue but has met with resistance from both the City Council and the City Attorney.

Having the IEC assert jurisdiction over these Denver's employees and officials and the Denver Code would cause confusion and encourage forum shopping. What would happen, for example,

if a complaint were filed against a Denver public official with both the IEC and the Denver Board of Ethics. Would the IEC defer its jurisdiction? Would the public official be required to defend both actions? Would the IEC try to second guess the Denver Board of Ethics on its interpretation of the Denver Code of Ethics? What would happen if a Denver public employee or official sought an advisory opinion on an issue before the Denver Board of Ethics, and an opinion was issued, or a waiver of a potential issue was granted, an authority that is expressly provided for in the Denver Code of Ethics? Would that opinion or waiver provide a “safe harbor” against a complaint as is required under both the Denver Code of Ethics and the IEC’s Rules of Procedure?

I believe that the IEC has not fully thought out the ramifications of this proposal. I also note that the turnaround time, slightly more than 30 days, was an insufficient amount of time to review and research the background of this proposal and schedule meetings with the appropriate representatives within the City and County of Denver. The Denver Board of Ethics only had one meeting scheduled during that time and there were other matters on the agenda. Moreover, it was a meeting in which only 3 of 5 Board Members could attend. The date for oral argument was also set during the annual meeting of the Council on Government Ethics Laws so two Board members and the Executive Director will be unable to submit oral comments. Hon

The Honorable Doris E. Burd, a member of the Denver Board of Ethics, joins in these comments.