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MICHAEL C. JOHNSTON
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Independent Ethics Commission
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Sent via email: iecinfo@state.co.us

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RE: Draft Position Statement 23- ___ regarding Home Rule Counties and Municipalities, as proposed by the Colorado Independent Ethics Commission (“the Commission”) and circulated on October 19, 2023

Dear Members of the Independent Ethics Commission:

Thank you for the opportunity to comment on the Draft Position statement pertaining to the Commission’s view of its jurisdiction over officials and employees of home rule municipalities. While the City and County of Denver (Denver) appreciates the acknowledgment that home rule jurisdictions may have different and even less-stringent ethics standards than what is contained in Article XXIX, § 7 of the Colorado Constitution, Denver believes the proposed Position Statement is contrary to Article XXIX, § 7 of the Colorado Constitution because the Position Statement infringes on the long-standing rights of home rule entities to govern on matters of local concern. Home rule municipalities derive this power from Article XX, § 6 of the Colorado Constitution¹ and home rule counties derive it from C.R.S. § 30-35-201(7).²

Amendment 41, “Standards of Conduct in Government,” to the Colorado Constitution now codified as Article XXIX, was passed by the voters in November 2006 and contains the following exemption for home rule cities and counties:

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.

¹ Article XX, § 6 grants home rule municipalities the “power to legislate upon, provide, regulate, conduct and control: [t]he creation and terms of municipal officers, agencies and employments; the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees.”

² C.R.S. § 30-35-201(7) grants home rule counties the power to govern the “powers, duties, appointment, term of office, removal, and compensation of all officers and employees of the county.”

Colo. Const. art. XXIX, § 7 (emphasis added).

Before and after the passage of Article XXIX, home rule cities and counties operated successfully under their own local regulations governing standards of conduct of their officials and employees. Without the authority or need, the Commission is considering the adoption of a Position Statement which arbitrarily supplants the local provisions of home rule municipality and county in the state.

The Position Statement being considered by the Commission contains a list of four components that the Commission believes must necessarily be included by home rule entities in order to be exempt from the Commission's jurisdiction. A review of the plain meaning of the language of Article XXIX reveals the Position Statement goes well beyond the meaning of the phrase "address the matters covered by this article."

Article XXIX was never intended to usurp the authority of home rule entities to legislate on standards of ethical conduct for their local officials and employees. The intent of the drafters and voters was to continue the authority of home rule entities to legislate on a matter of local concern. This intent was clearly stated by Martha Tierney, the chief author of the Article XXIX, in conversation with Deputy Secretary of State Bill Hobbs during the May 17, 2006 Title Board hearing for Article XXIX:

Hobbs: Line 16 says specific measures shall not apply to home rule jurisdictions that have adopted laws covering, concerning matters covered by that measure. The way I understood the measure, I think, is that home rule jurisdictions could have weaker ethics laws and that could prevail over this measure?

Tierney: You are correct that, if a home rule city has adopted by charter, ordinance, or resolution measures that address the matters covered in this article, then home rule will prevail.

Furthermore, Article XXIX's ballot title clearly indicates the intent to exclude home rule entities with their own standards of conduct provisions:

An amendment to the Colorado constitution concerning standards of conduct by persons who are professionally involved with governmental activities, and, in connection therewith, prohibiting a public officer, member of the general assembly, local government official, or government employee from soliciting or accepting certain monetary or in-kind gifts; prohibiting a professional lobbyist from giving anything of value to a public officer, member of the general assembly, local government official, government employee, or such person's immediate family member; prohibiting a statewide elected officeholder or member of the general assembly from personally representing another person or entity for compensation before any other such officeholder or member for a period of two years following departure from office; establishing penalties for a breach of public trust or inducement of such a breach; creating a five-member independent ethics commission to hear ethics

complaints, to assess penalties, and to issue advisory opinions on ethics issues; and specifying that the measure shall not apply to home rule jurisdictions that have adopted laws concerning matters covered by the measure.

The ballot title made voters aware that Article XXIX did not apply to home rule entities that have legislated in the area of standards of conduct for local officials and employees.

If the electorate intended to exclude only home rule entities that have provisions that contain the four identified topics, the language would have explicitly defined how and what matters were to be regulated. The Amendment is silent on this front and the plain meaning of the Amendment is clear. Thus, the Position Statement is an attempt to expand the jurisdiction of the Commission and it is inconsistent with the Amendment.

Finally, while Denver believes that its ethics code addresses all four of the components referenced in the Draft Position Statement, the Draft Position Statement puts every home rule municipality and county in the position of having to litigate to establish whether and to what extent its rules address all four components. Considering that the clear intent of Article XXIX to not apply to home rule municipalities and counties and that home rule jurisdictions may, in fact, have less stringent standards than those under Article XXIX, this creates an unnecessary burden.

For these reasons, the Position Statement should not be adopted/issued by the Commission.

Thank you for your consideration.



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Lori Weiser, Executive Director Board of Ethics
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