

State of Colorado



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Advisory Opinion 10-08 (Entry into Contract by a Retired 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 member of the faculty of Red Rocks Community College to enter into a contract with the college assuming that the circumstances described in the request are correct.

I. BACKGROUND

The Independent Ethics Commission ("IEC" or "Commission" has received a request for Advisory Opinion regarding the permissibility of the requestor's entering into a contract following his retirement from state service.

According to the request, the requestor was a full time faculty member at Red Rocks Community College ("RRCC"). He retired effective May 28, 2010. The requestor taught accounting, but was not involved in the accounting practices or procedures used at RRCC. He also operates a Subchapter S corporation which provides public accounting services. He has been asked to enter into a contract with Rocky Mountain Educational Center ("RMEC"), the continuing education department of RRCC, to "review and resolve differences between RRCC's accounts receivable and RMEC's accounts receivable for students registered at RMEC", as well as to review and establish written

procedures and accounting systems for RMEC for billing and collecting tuition and fees from students. The IEC has not reviewed the contract involved in this request.

The requestor has asked whether if this contract were effective July 1, 2010 (rather than six months after his retirement), 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. § 24-18-201 *et seq.*

II. JURISDICTION

The IEC finds that as an employee of “a public institution of higher education”, the requestor is a “government employee” and is therefore under the jurisdiction of the IEC. Article XXIX, Section 2(1).¹

IV. 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;

¹ This request was received by the IEC prior to the requestor's retirement, and because it concerns his obligations as a former public employee, the Commission will address this question.

(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 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 July 1, 2010, would violate this provision. Based on the information provided by the requestor, the Commission finds that it would not. The requestor purportedly was not involved in the accounting procedures at RRCC, other than as an employee who had to comply with those procedures. The 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. The contract appears, therefore not to violate this provision. The Commission cautions that proper contracting

procedures regarding bidding on contracts must be followed, however, and notes that there could be an appearance of impropriety as well as substantive violations of law if they were not. The proper contracting procedures are not within the scope of this request, however, and the Commission leaves that to RRCC and RMEC to determine if the proposed contract is in accordance with their established procedures and state law.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX or Colorado statute for the requestor to enter into a contract under the circumstances described in the request.

The Independent Ethics Commission

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Roy V. Wood, *Commissioner*

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