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Dino Ioannides, *Executive Director*

Advisory Opinion 15-12

(Application of Ethics Code to State Employees Serving as Elected Officials)

Summary: A State employee who is subject to Article XXIX and who is elected to a city council position in a home rule municipality remains subject to the provisions and restrictions of Article XXIX by virtue of her status as a government employee of the State of Colorado.

I. Background

An employee of the office of Secretary of State, whose duties include program administration in the regulation of registered lobbyists, was elected to the Aurora City Council in November 2015. She assumed her duties as a City Council member in December 2015. The Secretary of State's office has asked for an Advisory Opinion clarifying whether this employee remains subject to the provisions of Article XXIX for all purposes, including her performance of her duties as a member of the Aurora City Council.

The City of Aurora is a home rule municipality. In 2006 the Aurora City Council adopted Resolution R2006-94, by which the City adopted the Standards of Conduct as set forth in C.R.S. § 24-18-101, as they existed on October 30, 2006. The City did not incorporate changes to § 24-18-101 that occurred after October 2006, including any sections dealing with the formation and jurisdiction of the Independent Ethics Commission.

The question before the IEC is whether the employee is subject to Article XXIX for all purposes, even those related to her service as a member of Aurora's City Council; or whether, when serving as a City Council member, the provisions of Aurora's ethics code, which mirror C.R.S. § 24-18-101, *et seq.* (2006), apply to gifts including travel that would be provided to her as a City Council member along with other members of the Council?

II. Jurisdiction

The IEC finds that employees of the Colorado Secretary of State's office are government employees and therefore subject to the jurisdiction of the Commission. *See Colo. Const. Art. XXIX, §§ 2(1) and (3).*

III. Applicable Law

Article XXIX, Section 7 states:

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 municipalities* that have adopted charters, ordinances, or resolutions that address the matters covered by this article. (*Italics added.*)

IV. Discussion

Although this specific issue is one of first impression, Article XXIX applies to all covered individuals, including employees of the Colorado Secretary of State's office. There is no exception in Article XXIX for activities such as service on a city council.

Thus in a circumstance, such as the one here, where a covered individual voluntarily seeks and is elected to a city council seat, even in a home rule municipality, that person remains covered by the provisions of Article XXIX by virtue of her status as a state "government employee" as defined by § 2(1) of Article XXIX. While the Commission respects the City of Aurora's self-interest as a home rule municipality, and understands there may be circumstances where Article XXIX may impose limitations greater than those imposed by the City, this is an unavoidable result due to the individual's dual status as both a state government employee and a member of the city council.

It is not necessary at this time to draw any conclusions about whether Aurora's Resolution R2006-94 adequately adheres to the guidance set forth in the Commission's Position Statement 16-01. Neither is it necessary to draw any conclusions about whether, how, or to what extent Aurora's Resolution R2006-94 applies to the state government employee in question. It is sufficient in this case, rather, to determine that Article XXIX applies at all times to the state government employee in question who also serves on a home rule municipality's city council.

V. Conclusion

For the reasons noted above, an employee of the office of the Secretary of State who is elected to a city council remains a covered individual subject to Article XXIX, including the recognized exceptions thereto, for all purposes and at all times.

The Commission cautions that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission, therefore, encourages individuals with particular questions to request fact-specific advice through requests for advisory opinions or letter rulings related to their individual circumstances.

The Independent Ethics Commission

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