

State of Colorado



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Dino Ioannides, *Executive Director*

Advisory Opinion 17-04 (Conflict of Interest, Local Government Official)

Summary: It is not a violation of Article XXIX or the statutory Standards of Conduct for a county commissioner to continue serving as a director on the board of a transportation authority under the facts and circumstances presented in the request.

I. Background

Requester is an Eagle County Commissioner. Among other duties as a county commissioner, the Requester sits “in a quasi-judicial capacity” to review, hear, and approve or deny land use applications.

Requester also serves as a member of the Board of Directors for the Roaring Fork Transportation Authority (“RFTA”). RFTA is a regional transportation authority created under § 43-4-603, C.R.S. RFTA’s purpose is to finance, construct, operate, and maintain an efficient, sustainable, and regional multi-modal transportation system at locations within or without the boundaries of RFTA. RFTA directors serve without compensation, except for expense reimbursement. The members of RFTA include Eagle County, Garfield County, Pitkin County, the City of Aspen, the Town of Basalt, the Town of Carbondale, the City of Glenwood Springs, and the Town of Snowmass Village.

Article 4 of Title 43, C.R.S., authorizes the creation of transportation authorities, each of which is a “separate political subdivision and body corporate of the state” having “all the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate.” § 43-4-603(1), C.R.S. Each transportation authority is mandated to have at least five directors, each of whom must be an elected official from every member of the combination. § 43-4-603(2)(b)(I), C.R.S.

One of the issues pending before the Eagle County Board of County Commissioners (“BOCC”) is a land-use application for Preliminary Plan for Planned Unit Development. The application concerns property that is located within the Roaring Fork Valley portion of Eagle County and seeks a rezoning of the property. The application initially presented a public benefit dedication of 50 parking spaces to RFTA, and was later amended to dedicate 20 parking spaces and \$400,000 to build additional parking on other land. As a result of the application amendment,

RFTA's Director of Planning sent a letter to be considered by Eagle County in connection with the County's consideration of the application. The letter expressed dissatisfaction with the application amendment.

Requester does not recall being involved in discussions concerning the public benefit being offered by the land-use applicant. The Requester did not have any involvement in developing RFTA's position on the application, or in drafting or approving RFTA's responsive letter.

Requester is concerned about the potential for a conflict of interest if the Requester was to take official action on the application, given that RFTA could benefit from a County decision on the application. Requester asks whether her taking of official action would violate the code of ethics for local government officials as set forth in the Colorado Constitution and in § 24-18-109(2)(b), C.R.S. During the pendency of this advisory opinion request, Requester has resigned from the RFTA Board, but asks whether she may be reappointed to the RFTA Board during the pendency of the hearing on the application.

II. Jurisdiction

Colo. Const. Art. XXIX gives the Commission jurisdiction over local government officials. *See generally*, Colo. Const. Art. XXIX §§ 3, 4, and 6. Requester is a local government official under Colo. Const. Art. XXIX § 2(3).

III. Applicable Law

Section 43-4-603, C.R.S., provides, in pertinent part:

- (2) Any contract establishing [a transportation] authority shall specify:
 - (a) The name and purpose of the authority and the regional transportation systems to be provided;
 - (b) The establishment and organization of the board of directors in which all legislative power of the authority is vested, including:
 - (I) The number of directors, which shall be at least five, all of which, except as provided in subsection (5) of this section, shall be elected officials from the members of the combination and which shall include at least one elected official from each member of the combination...

The declarations in Section 1 of Colo. Const. Art. XXIX state, in pertinent part:

- (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;
- (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...

Section 5 of Colo. Const. Art. XXIX provides, in pertinent part:

...The purpose of the independent ethics commission shall be to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions, on ethics issues arising under this article and under any other standards of conduct and reporting requirements as provided by law...

Section 24-18-109, C.R.S., provides, in pertinent part:

(2) A local government official or local government employee shall not:
(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent...

IV. Discussion

At the heart of this request for advisory opinion is the extent to which the dual role of the Requester could inherently create an appearance of impropriety or a conflict of interest that violates Article XXIX of the Colorado Constitution or the Standards of Conduct found in Article 18 of Title 24, C.R.S.

Article XXIX of the Colorado Constitution

The voters who adopted Article XXIX expressed the intention, *inter alia*, to preserve the respect and confidence of the people in their elected officials by requiring elected officials to avoid conduct that is a violation of the public trust. In Position Statement 08-01, the Commission stated that the term “public trust” means that employees and officials must carry out their duties for the benefit of the people. The dual role played by the Requester as both an Eagle County Commissioner and as a Director on the RFTA Board does not, in and of itself, violate public trust or the provisions of Article XXIX.

As a member of RFTA, Eagle County is required by state law to have one of its elected commissioners serve as a Director on the RFTA Board. This dual role created by the statutory scheme appears to contemplate that the interests of Eagle County will be represented on the RFTA Board by an Eagle County elected official in the very same manner that the interests of the other RFTA member governments are represented. But the reverse is not true; namely, it is not true that a Director on the RFTA Board is expected to represent the RFTA’s interests in the official business of the member government.

This is not to say that RFTA’s interests will always be aligned with those of the member governments. This is clearly not the case, inasmuch as the RFTA is composed of various member governments with different interests. Rather, it is to say that the statutory scheme contemplates that *Requester* should represent her member government’s interests in both fora. As such, there is no inherent conflict of interest nor is there an appearance of impropriety that would erode the public trust.

Standards of Conduct in Article 18 of Title 24, C.R.S.

Section 24-18-109(2)(b), C.R.S., prohibits a local government official from performing an official act that directly and substantially affects to its economic benefit a business *or other undertaking* in which he either has a substantial financial interest or is engaged as counsel, consultant, *representative*, or agent (emphasis added).

Requester receives no personal economic benefit from her service on the RFTA. Under the statutory scheme, the Requester serves as a representative of Eagle County in the RFTA. The reverse is not true; namely, it is not true that the Requester serves as a representative of the RFTA in Eagle County. Moreover, the reference to “other undertaking” should not be interpreted to refer to the RFTA, which is a “public body politic and corporate” that, under the statutory scheme, mandates representation from the various member governments. As such, § 24-18-109(2)(b), C.R.S., is inapplicable to the facts as presented in this case.

Best Practices

Due to the unique nature of Requester’s dual role, the Commission recommends that Requester disclose her dual role whenever taking official action for the County that would also implicate Requester’s role in the RFTA.

V. Conclusion

It is not a violation of Article XXIX or the statutory Standards of Conduct for Requester to continue serving as both a county commissioner and as a director on the board of a transportation authority under the facts and circumstances presented in the request.

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 more fact-specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

The Independent Ethics Commission

William J. Leone, *Chair*
Bob Bacon, *Vice-Chair*
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Dated: April 3, 2017