



Elizabeth Espinosa Krupa, *Chair*
Selina Baschiera, *Vice-Chair*
Annie Kao, *Commissioner*
Sarah Mercer, *Commissioner*
Cole Wist, *Commissioner*

Independent Ethics Commission
1300 Broadway, Suite 240
Denver CO 80203
Phone: (720) 625-5697
www.colorado.gov/iec

Dino Ioannides, *Executive Director*

Advisory Opinion 21-02 (Conflict of Interest - Local Government Official)

Summary: Under the facts and circumstances of this request, it would not be a violation of Article XXIX for Requestor to participate in the future regulation of short-term rentals (“STRs”) by the board of county commissioners (“BOCC”) or the board of health (“BOH”), or to hear future appeals as a member of the local board of equalization (“BOE”). The Independent Ethics Commission (“Commission”) makes no determination about any actions the Requestor has already taken with respect to STRs as a member of the BOCC, BOH, or BOE.

I. Background

Requestor is a member of a board of county commissioners (“BOCC”) in a Colorado county and, in that capacity, also serves on that county’s board of health (“BOH”) and the local board of equalization (“BOE”).¹ The Requestor’s term expires in February, 2023.

Prior to March 2020, Requestor operated a private short-term rental (“STR”) business within the boundaries of an incorporated municipality in the county. Due to COVID-19, Requestor cancelled his STR bookings in March 2020. Because of his role as a member of the BOH, which now plays a role in the regulation of STRs to mitigate the spread of COVID-19, he also filed a notice of potential conflict with the Colorado Secretary of State around the same time. Requestor has kept his municipal, sales tax, and lodging licenses active. Initially, Requestor indicated that he would not resume renting out his STR until the state of emergency due to COVID-19 was lifted by the governor and at least until the end of 2022. However, upon further reflection, Requestor now intends to close his STR permanently.²

The BOCC regulates STRs in the unincorporated portions of the county. The BOCC is currently considering regulations that will, among other things, require a large percentage of STRs in

¹ County boards of equalization hear appeals of property valuations and exemptions, correct errors in appraisals, and otherwise act to adjust assessments to achieve equalization in the assessment of property within the jurisdiction.

² Requestor also states that this advisory opinion “would govern any decision to reopen my STR, which is not my intent or desire.”

unincorporated portions of the county to “welcome a permanent occupant into their home in order to continue to operate”. Requestor’s STR will not be affected by the STR regulations adopted by the BOCC because Requestor’s STR is in an incorporated portion of the county and is regulated by the municipality. However, Requestor reported that some citizens of the county have raised the concern that he may have a conflict of interest from a supply-and-demand perspective: because the BOCC’s contemplated regulations may reduce the number of lawfully operated STRs in the unincorporated portions of the county, the new regulations may “change” (presumably, this means “increase”) the amount Requestor is able to charge for lodging.

II. Jurisdiction

“Local government official” means an elected or appointed official of a local government but does not include an employee of a local government. Colo. Const. art. XXIX, § 2(3). The Commission has jurisdiction over Requestor as a local government official.

The Commission has authority to issue advisory opinions on ethics issues arising under Article XXIX or any other standards of conduct or reporting requirements as provided by law. Colo. Const. art. XXIX, § 5(5).

III. Applicable Law

Section 24-18-109(2), C.R.S., provides:

A local government official...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...

Section 24-18-102(7), C.R.S., provides:

“Official act” or “official action” means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

IV. Discussion

The primary question before the Commission is whether Requestor may participate in any official action the BOCC may take with respect to the regulation of STRs in the unincorporated portions of the county. The Commission also considers whether Requestor may continue to fulfill his official duties as a member of the BOH and the local BOE. The Commission will not consider as part of this advisory opinion whether Requestor’s prior involvement with the STR issue as a local government official satisfies the statutory requirements.

The questions before the Commission must be answered in light of Requestor’s representations that he intends to permanently close his STR business. If Requestor intended to continue

operating his business, or if Requestor intended to only temporarily close his business, the analysis herein would be quite different.

Considering the information Requestor has provided, there appears to be no conflict of interest in Requestor's future involvement in the BOCC's regulation of STRs in the county. This is true because, if his STR business has been closed, there is no possibility that any official action he takes will directly and substantially affect to its economic benefit a business or other undertaking in which he has a substantial financial interest. The same is true for his involvement on the BOH and the BOE. In addition, it does not appear that any official actions taken by Requestor as a member of the BOH or BOE, as pertaining to STRs, will have a particularized benefit to the Requestor. In the Findings and Conclusions of Complaints 20-21 and 20-22, the Commission stated:

The type of tangential benefit...in this case is not the type of self-dealing to which the conflict of interest statute is directed. It is expected, if not encouraged, that local officials will be invested in the communities they serve, and will make policy decisions that they believe will benefit the greatest number of constituents. If the public official falls in that category of persons benefitted by their policy decisions, that fact does not create a conflict of interest, unless the public official's benefit is above and beyond that of the general public.

If, contrary to Requestor's representations in the request, Requestor should eventually decide to proceed with reopening his STR, the Commission strongly encourages him to first seek another advisory opinion prior to proceeding.

V. Conclusion

Under the facts and circumstances of this request, it would not be a violation of Article XXIX for Requestor to participate in the regulation of STRs by the BOCC or the BOH, or to hear appeals as a member of the BOE.

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 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

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Dated: November 16, 2021