

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Andy McElhany,
Complainant,

v.

Matt Baker,
Respondent.

On February 28, 2012, the Independent Ethics Commission (“IEC” or “Commission”) heard testimony and received other evidence regarding Complaint No. 11-01 at a hearing, as required by Colorado Constitution Article XXIX, sec. 5(3)(c). Prior to the beginning of the hearing, Chairman Grossman noted that the Commission was invoking the “rule of necessity” in order that the hearing could be conducted. The Chairman inquired of the parties whether there was an objection to the participation by any of the Commissioners in the hearing. Neither party objected.

Both parties were represented by counsel. Complainant called three witnesses: Andy McElhany, Mike May, and Matt Baker. Complainant did not identify or endorse Mr. Baker as a witness prior to the hearing, so Respondent objected to his being called. After discussion, the Commission allowed Mr. Baker to be examined by Complainant to establish the foundation for exhibits offered into evidence by the Complainant. All exhibits offered by Complainant, (Exhibits 1-9) were accepted into evidence by the Commission.

At the end of Complainant’s direct case, Respondent moved to dismiss based on failure of complainant to establish a *prima facie* case of a violation of Colorado Constitution Article XXIX. After discussion among the Commissioners, the motion was granted. 3-1 (Commissioner Grossman dissenting).

Based on the Commission’s investigation and the evidence received at the hearing, the Commission finds as follows.

Findings of Fact

1. As of November, 2010 Matt Baker was a member of the Public Utilities Commission (“PUC”).
2. On or about September 9, 2010, Mr. Baker was invited by Extenda S.A., (“Extenda”) to participate in a conference in Seville, Spain on alternative energy issues.
3. Mr. Baker received permission to travel to Spain from his supervisors as required by the PUC, the Department of Regulatory Agencies, and the Governor’s Office.
4. Mr. Baker attended the conference from November 8, 2010 to November 12, 2010. Extenda fully reimbursed the State of Colorado for Mr. Baker’s travel expenses in the amount of \$2,845.10.

Conclusions of Law

1. Mr. Baker was a “government employee” as defined by Article XXIX, section 2(1) and was subject to the Commission’s jurisdiction at the time of the events in question.
2. Complainant failed to make a *prima facie* showing that Mr. Baker accepted a gift of travel in violation of Colorado Constitution Article XXIX.
3. Complainant also failed to make a *prima facie* showing that the trip was paid for by a prohibited entity.

Wherefore, the Commission dismisses Complaint 11-01 against Matt Baker.

The Independent Ethics Commission

Dan Grossman, *Chair*, dissenting
Sally H. Hopper, *vice chair*
Bill Pinkham, *Commissioner*
Matt Smith, *Commissioner*

February 28, 2012

CERTIFICATE OF MAILING

This is to certify that on the 29th day of February, 2012, I emailed true copies of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW ORDER** in the United States mail, postage prepaid, and addressed as follows:

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