

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Barbara L. Arnett,
Complainant,

v.

Rebecca Brandau,
Respondent.

On February 4, 2013, the Independent Ethics Commission ("IEC" or "Commission") conducted a hearing as required by Colorado Constitution Article XXIX, section 5(3)(c) regarding Complaint 12-06 filed with the Commission. The IEC heard testimony and reviewed audio and documentary evidence. All findings are made by a preponderance of the evidence. Based on the Commission's investigation and the evidence received at the hearing, the Commission finds as follows:

Findings of Fact

1. Rebecca Brandau is a city councilwoman from Leadville, CO. She was appointed to that position in January 2012.
2. On April 17, 2012, Amanda Jensen spoke at a meeting of the Leadville City Council ("Council") meeting and informed the Council that she was interested in organizing a Farmer's Market in Leadville. At this point in time, she had not filed for a temporary use permit, but was requesting an indication of whether the Council would approve the request. She asked if any members of the Council would be interested in serving on a Steering Committee.
3. Mayor Jamie Streuver asked if any council members were interested in volunteering. Ms. Brandau and another councilwoman, Diane Smith, volunteered.

4. Ms. Brandau attended one meeting of the Steering Committee, and offered general advice to Ms. Jensen about public safety issues, including whether dogs would be permitted at the event. She suggested that Ms. Jensen speak with the police chief. Diane Smith did not attend the meeting.
5. On June 15, 2012, the temporary use permit application was filed with the City of Leadville, and the matter was placed on the Council Agenda for June 19, 2012.
6. The Farmer's Market was discussed at Council meetings on June 25 and 26, 2012.
7. The matter of the Farmer's Market was called to a vote on June 26, 2012. The Respondent, Barbara Arnett, called for a point of order stating that Ms. Brandau had a conflict of interest because she had served on the Steering Committee.
8. Ms. Brandau responded that she served on the Steering Committee as a representative of the Council, in order to promote the City of Leadville's interests. She disclosed that she had no personal or financial interest in the Farmer's Market.
9. Ms. Brandau voted on the temporary use permit, which was approved by the Council with a 4-2 vote, with one member absent.

Conclusions of Law

Subsection 1 and subsection 3(a) of section 5 of Article XXIX vest the Commission with jurisdiction over complaints on ethics issues arising under Article XXIX and under any other standards of conduct and reporting requirement as provided by law.

Applicable Standards of Conduct

A. Colorado Revised Statutes §24-18-105 (2)

This statute provides that a local government official... "should not acquire or hold an interest in any business or undertaking which he has reason to believe may be directly or substantially affected to its economic benefit by official action to be taken by an agency over which he has substantive authority."

B. Colorado Revised Statutes §24-18-105 (4)

This statute provides that a local government official... "should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking."

C. Colorado Revised Statutes §24-18-109

Section 3 of this statute provides that:

- (a) A member of a governing body who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.
- (b) A member of the governing body of a local government may vote notwithstanding paragraph (a) of this subsection (3) if his participation is necessary to obtain a quorum or otherwise enable the body to act and if he completes the voluntary disclosure procedures under section 24-18-110.

After reviewing the facts and the law, the Commission finds that:

1. Ms. Brandau served on an informal steering committee organized by Ms. Jensen with the knowledge of the other members of City Council.
2. Ms. Brandau's participation on the steering committee was at the request of the Mayor of Leadville, who had asked for volunteers at a public meeting.
3. Ms. Brandau's involvement was advisory.
4. Ms. Brandau did not have a personal or private interest in the Farmer's Market. Ms. Brandau participated on the Farmer's Market's steering committee solely as a representative of the Council. Ms. Brandau believed the Farmer's Market was in the best interest of the City of Leadville.
5. Ms. Brandau did not have a financial interest in the Farmer's Market.
6. Section 24-18-109 (3)(b) was not applicable.

THEREFORE, the Commission finds no violation of Article XXIX or any other

standards of conduct under the Commission's jurisdiction in this case. The Commission does, however, take this opportunity to remind all covered individuals that they should be cognizant of potential appearances of impropriety.

Participation in outside group activities may cross the line between advisory and advocacy roles.

The Independent Ethics Commission

Dan Grossman, *Chair*
Sally H. Hopper, *Vice Chair*
Rosemary Marshall, *Commissioner*
Bill Pinkham, *Commissioner*
Matt Smith, *Commissioner*

Dated: February 15, 2013

CERTIFICATE OF MAILING

This is to certify that on the 15 day of February 2013, I emailed true copies of the foregoing **Final Order** addressed as follows:

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