

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Lark's Wing, L.L.C.
Complainant,

v.

Dene Kay Thomas,
Respondent.

On September 3, 2013, the Independent Ethics Commission ("IEC" or "Commission") conducted a hearing as required by Colorado Constitution Article XXIX, section 5(3)(c) regarding Complaint 13-07 filed with the Commission. The hearing was on a Motion to Dismiss filed by the Respondent. The Motion to Dismiss was converted by the Commission to a Motion For Summary Judgment. The IEC reviewed documentary evidence and heard arguments by counsel for both parties. All findings are made by a preponderance of the evidence. Based on the Commission's investigation and the undisputed material facts before the Commission, the Commission finds as follows:

Findings of Fact

1. Dene Kay Thomas is the President of Fort Lewis College ("FLC") in Durango, Colorado, a public institution of higher education.
2. As president of an institution of higher education, President Thomas is obligated contractually to engage in fundraising on behalf of FLC.
3. Richard Miller, FLC's Executive Director for Institutional Research and Planning, learned that Sheikh Adel Aujan is an alumnus of FLC and chairman of one of the biggest beverage manufacturers and distributors in the Middle East. Mr. Miller notified the FLC Foundation of this information. Mr. Miller contacted Sheikh Aujan and subsequently traveled to the United Arab Emirates ("UAE") to present the Fort Lewis College Foundation's Distinguished Alumni Lifetime Achievement Award to Sheikh Aujan. Mr. Miller requested Sheikh Aujan meet with President Thomas at a future date.

4. When Mr. Miller returned to FLC, he and the FLC Foundation found approximately 20 additional alumni living in and around the UAE. FLC and the FLC Foundation planned a trip in which President Thomas would travel to Dubai, UAE to meet with Sheikh Aujan and the other alumni.
5. Mr. Miller was chosen to go to Dubai since he had worked in the Middle East, was familiar with the culture and protocols and had met Sheikh Aujan. FLC consulted with experts on Middle Eastern culture and determined that President Thomas should be accompanied by her husband, in order not to offend cultural norms of the region.
6. President Thomas requested permission and payment of costs for her and her husband to travel to Dubai from the FLC Board of Trustees and College Travel Office. FLC Board of Trustees and the College Travel Office reviewed the request to travel under the FLC Fiscal Rules, approved the request and agreed to pay expenses, including airfare for Mr. Thomas and Mr. Miller.
7. President Thomas was in UAE for six (6) days. Traveling to and from UAE took an additional three days. While in UAE, she met with alumni and representatives of the government and various nongovernmental organizations. She also did some sightseeing, including visits to a camel farm and an indoor skiing facility.
8. On February 24, 2013, President Thomas and her husband attended a reception and dinner hosted by Sheikh Aujan for alumni and friends of FLC. President Thomas delivered a prepared speech at that event.
9. Upon her return to Durango, President Thomas submitted a reimbursement request to the FLC for 8 days of *per diem* at \$139.50 for herself, as well as airfare for herself and her husband. Since President Thomas and her husband stayed with friends in Dubai, they did not incur lodging costs. The total amount reimbursed was \$4818.99. This reimbursement was reviewed and paid in full by the College Travel Office.

Conclusions of Law

10. 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.

11. The Complaint alleges that President Thomas and her husband violated both FLC fiscal rules and Article XXIX of the Colorado Constitution. Based on the undisputed material facts presented by the parties and for the foregoing reasons, the Commission finds that this complaint presents no ethics issues arising under the FLC fiscal rules. The Commission also finds that assuming the gift ban provisions of Article XXIX apply to President Thomas, any gifts received are covered by the exemption found in Article XXIX, section 3(3)(e).

FLC Fiscal Rules

12. President Thomas traveled to Dubai for the purpose of fundraising for FLC, a requirement of her contract with FLC. President Thomas' trip was approved by the FLC Board of Trustees and the College Travel Office, the applicable reviewing agencies, as being a benefit to FLC. The College Travel Office approved President Thomas' reimbursement request. The Complaint does not allege, and there are no facts supporting the contention that Sheikh Aujan intended to improperly influence President Thomas. Rather, it was President Thomas and FLC who contacted Sheikh Aujan and requested the meeting. Based on these undisputed facts, this case does not set forth any ethical issues arising under FLC's fiscal rules.

Article XXIX

Article XXIX, section 2(1)

13. Section 3 of Article XXIX (Gift ban) reads in relevant part:

(2) No public officer, member of the general assembly, local government official, or government employee, either directly or indirectly as the beneficiary of a gift or thing of value given to such person's spouse or dependent child, shall solicit, accept or receive any gift or other thing of value having either a fair market value or aggregate actual cost greater than fifty dollars (\$50) in any calendar year, including but not limited to, gifts, loans, travel, entertainment, or special discounts, from a person, without the person receiving lawful consideration of equal or greater value in return from the public officer, member of the general assembly, local

government official, or government employee who solicited, accepted or received the gift or other thing of value.

14. Section 2(1) of Article XXIX defines Government employee in relevant part as:

“any employee, including independent contractors, of the state executive branch, the state legislative branch, a state agency, a public institution of higher education, or any local government, except a member of the general assembly or a public officer.”
15. Based on this definition, President Thomas is a government employee for purposes of Article XXIX's gift ban provisions. President Thomas' husband, however, is not a government employee and, therefore, not subject to the Commission's jurisdiction.
16. The Commission seriously questions whether Sheikh Aujan provided President Thomas, as opposed to FLC as an institution, with a gift. However, for purposes of President Thomas' motion and the complaint, the Commission will assume that Article XXIX applies.
17. Section 3(3)(e) of Article XXIX sets forth an exception to section (3), subsection 2's gift ban provisions and excludes from the gift prohibition:

“Admission to and cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or answer questions as part of the scheduled program.”
18. The undisputed facts evidence that President Thomas spoke at the alumni event hosted by Sheikh Aujan and that this was a planned event to which President Thomas and others were invited. As a result, the dinner fell under the Constitutional exception contained in section 3(3)(e).

THEREFORE, the Commission grants President Thomas' motion for summary judgment and finds no violation of Article XXIX or any other standards of conduct under the Commission's jurisdiction in this case.

The Independent Ethics Commission

Matt Smith, *Chair*
Rosemary Marshall, *Vice Chair*
Bob Bacon, *Commissioner*
William J. Leone, *Commissioner*
Bill Pinkham, *Commissioner*

Dated: October 11, 2013

CERTIFICATE OF MAILING

This is to certify that on the 11th day of October 2013, I emailed true copies of the foregoing **Final Order** addressed as follows:

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Jane T. Feldman