

ORDER OF DISMISSAL

M.A.K. Investment Group, LLC
Complainant,

vs.

Jeff Allen,
Respondent.

This matter comes before the Independent Ethics Commission (“IEC” or “Commission”) for a determination of whether the Commission would exercise its jurisdiction over a local official of a home rule municipality. Having heard argument and reviewed related pleadings, the Commission finds as follows:

1. On March 18, 2016, M.A.K. Investment Group, LLC, (“Complainant”) filed a complaint with the Commission. On January 23, 2017, the Commission deemed the complaint to be non-frivolous.
2. The complaint alleged that Respondent, Jeff Allen, engaged in unethical behavior while serving as an elected city council member for the city of Glendale, Colorado. More specifically, the complaint alleged that Mr. Allen voted to approve the city’s budget at the December 1, 2015, council meeting. Contained within the budget was a provision for “Annual contributions to various organizations” and “Vendor’s fee paid in connection with City’s economic development”. The complaint alleged that this money went to the Glendale Chamber of Commerce, where Mr. Allen was serving as president, ostensibly to pay Mr. Allen’s expenses and/or salary.
3. Glendale is a home rule municipality under Art. XX of the Colorado Constitution.
4. On December 19, 2016, the Commission issued Position Statement 16-01 to address Art. XXIX, sec. 7 and its applicability to home rule counties and municipalities.
5. On May 5, 2017, the Commission ordered both parties to submit legal briefs addressing whether the Commission had jurisdiction over Respondent.

6. On July 24, 2017, the Commission conducted a hearing to determine whether it would exercise its jurisdiction over Respondent.
7. On September 28, 2017, the Commission completed its public deliberations. It was then moved, seconded and approved to dismiss the complaint, in the Commission's discretion, based on the fact the acts alleged occurred prior to the adoption of Position Statement 16-01.

Accordingly, the Commission, having found the conduct alleged in Complaint 16-13 occurred prior to the adoption and issuance of Position Statement 16-01, in its discretion, dismisses Complaint 16-13.

The Independent Ethics Commission

Matt Smith, *Chair*, dissenting in part
April Jones, *Vice Chair*
William J. Leone, *Commissioner*
JoAnn Sorensen, *Commissioner*
Gary Reiff, *Commissioner*

Dated: October 30, 2017

Commissioner Smith, dissenting in part:

My disagreement with the majority is procedural. For the first time, the Commission charts its way in determining the application of Section 7 of Article XXIX of the Colorado Constitution in an ethics complaint.

The Commission properly made its “non-frivolous” determination on January 23, 2017. Article XXIX, Section 5 (3) requires that a “frivolous determination” is the threshold requirement for any complaint filed with the Commission whether or not a Section 7 analysis concerning the adequacy of matters addressed by home rule entities may also be required. As a practical matter, there is no other way for the Commission to protect as “confidential” matters which may be determined as “frivolous” by the Commission. Article XXIX, Section 5 (3)(b). *See also, Colo. Ethics Watch v. Independent Ethics Comm’n*, 369 P.3d 270, 2016 CO 21 (Colo. 2016).

Despite how awkward the proceeding may appear, Section 7 of Article XXIX requires the Commission to accord deference to “home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by [Article XXIX].” I contend that Section 7 of Article XXIX places an obligation upon the Commission to publicly address the adequacy of such charters, ordinances, or resolutions when asserted. I further contend that the Commission may review such charters, ordinances, or resolutions on their face in reaching a Section 7 determination. The purpose of providing such a procedural step is to preserve the integrity of Section 7 of Article XXIX, assure that constitutionally mandated jurisdiction is protected and to promote a legally sustainable discourse on the matters addressed by Article XXIX. On their face, I find that the ethics provisions of the home rule city in the matter before the Commission fall well below the requirements of Article XXIX. *See*, Position Statement 16-01.

While I may disagree with the majority on how the Commission procedurally reached its answer in this case, I do respect and agree that the Commission has the authority to dismiss the complaint before it.