

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 17-25

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN THE MATTER OF: LUCINDA RICOTTA

This matter comes before the Independent Ethics Commission (“Commission”) on a complaint filed by Stephen Harrison, Eva Mares, Ronald Mares, Steven Gardner, Donna Drautheim, Joshua Baker, and Shane Espinoza (“Complainants”)¹ against Lucinda Ricotta, town clerk for the town of Williamsburg, Colorado. Complainants alleged various ethical violations surrounding Mrs. Ricotta’s actions as a town trustee. In its Notice of Issues for Hearing, the Commission narrowed the issues for hearing to alleged conflicts of interest under section 24-18-109(2)(b) and alleged breach of the public trust under section 24-18-103, C.R.S., for failure to carry out one’s duties pursuant to §§ 31-4-110 and 31-4-305, C.R.S. The Commission has jurisdiction to enforce ethical standards of conduct pursuant to section 5(1) of Article XXIX of the Colorado Constitution.

On March 18, 2019, the Commission held an evidentiary hearing and deliberated on the merits of the case in public. For the reasons set forth below, the Commission has determined that Mrs. Ricotta’s actions in carrying out her duties as town clerk do not constitute violations of sections 24-18-109(2)(b) and 24-18-103, C.R.S.

I. Findings of Fact

1. Mrs. Ricotta testified that she had been town clerk of Williamsburg for about 10 years. She testified that she had not received formal training.
2. Mrs. Ricotta was, at all times relevant to the complaint, married to Steve Ricotta, who was elected as a town trustee of Williamsburg in November 2016.
3. Steve Ricotta was, at all times relevant to the complaint, president of the Royal Gorge Chapter of the Brotherhood of the 74, a motorcycle-riding organization.

¹ Mr. Espinoza, Ms. Krautheim, and Mr. Baker later withdrew from participating in the complaint process or did not participate in the process.

4. Mrs. Ricotta was not a member of Brotherhood of the 74.
5. On April 25, 2016, property owners Donna and Jack Duncan filed a written request with the town of Williamsburg to vacate a public alleyway located in block 4 of the “Colorado Fuel and Iron Co.” addition to Williamsburg.
6. That alleyway bisected the Duncans’ properties, Lots 3-7 and 11-16 in Block 4.
7. The alleyway, as extended, also bisected Brotherhood of the 74’s properties, Lots 4-10 and 11-20 in Block 5.
8. Mrs. Ricotta testified at hearing that the Duncans’ request was not granted because the mayor at the time believed it was a public right-of-way that could not be vacated.
9. On July 25, 2016, Mrs. Ricotta signed and filed an application for a Zoning and Building Permit on behalf of the Brotherhood of the 74 to construct a “[g]arage” on the Brotherhood of the 74’s properties. The application does not specify the lot, block, or subdivision number.
10. After the permit was issued, the permit was used by the Brotherhood of the 74 to build a structure on its property for use as a clubhouse or meeting place. Mr. Ricotta paid for one-half of the building costs.
11. Mr. Ricotta’s undisputed testimony at hearing was that the property owned by Brotherhood of the 74 belongs to the national chapter of that organization, which has about 175 members.
12. On November 14, 2016, Mr. Ricotta emailed a request to Mrs. Ricotta, in her capacity as town clerk, for vacation of the lot lines of Lots 4-10 and 11-20 in Block 5, in order to create one parcel of the Brotherhood of the 74’s properties.
13. On November 15, 2016, Mrs. Ricotta recorded a document with the Fremont County Clerk and Recorder, representing that the town of Williamsburg “has approved the vacation of alleyway of block 4 and 5 of Colorado Fuel and Iron CO’s addition to Williamsburg. For further use and development of property owners located within those blocks [sic].”
14. Mrs. Ricotta included in the document a typewritten signature that the document had been signed by “Jerry Farringer, Mayor”.
15. Mr. Farringer had not yet been sworn in as the mayor of Williamsburg and had not given Mrs. Ricotta approval to sign the document on his behalf. The town of Williamsburg had not approved vacation of the alleyway.

16. Mrs. Ricotta testified that she had paid for recording of the document—around \$22.00—with her own money, and that she did not request reimbursement.

17. On November 22, 2016, the Duncans again filed a written request for vacation of the alleyway on Block 4.

18. At a December 5, 2016 meeting of the town of Williamsburg, the new town trustees, including Mr. Ricotta, and Jerry Farringer, the new mayor, were sworn into office.

19. At the December 5, 2016 meeting, the town trustees—including Mr. Ricotta—voted to approve vacation of the alleyway, including the alleyway’s extension through the properties of the Brotherhood of the 74..

20. The minutes of the December 5, 2016 meeting read, “A [w]ritten submission by Donna Duncan to vacate alleyway of block 4 on Pikeview and The Brotherhood of the 74 request the same for block 5. A motion was made by Billy Jack to vacate the 10 foot alleyway easement between east and west lots. Seconded by Forrest. Roll Call: 7 yes, 0 no, 0 abstain and 0 absent. Motion carried.”

21. On December 6, 2016, Mrs. Ricotta recorded a document with the Fremont County Clerk and Recorder, again representing that the town of Williamsburg had approved vacation of the alleyway of blocks 4 and 5.

22. On February 22, 2017, the Williamsburg town attorney advised Mrs. Ricotta that, in order to vacate an alleyway, the town must pass an ordinance pursuant to section 43-2-303(1)(a), C.R.S.

23. At the March 6, 2017 meeting of the town of Williamsburg, the town trustees did a “first read” of an ordinance to vacate the alleyway on Blocks 4 and 5.

24. At the April 3, 2017 meeting of the town of Williamsburg, the town trustees voted to pass an ordinance vacating the alleyway on Blocks 4 and 5, with Mr. Ricotta abstaining.

25. Mrs. Ricotta recorded the ordinance with the Fremont County Clerk and Recorder on April 13, 2016.

II. Conclusions of Law

a. Jurisdiction

26. Mrs. Ricotta is the town clerk for Williamsburg and thus, a “government employee” within the meaning of Section 2 of Article XXIX. The Commission has jurisdiction over Mrs. Ricotta pursuant to Section 5(1) of Article XXIX.

27. Mrs. Ricotta was subject to the Commission’s jurisdiction at the time of the events in question.

28. Mrs. Ricotta is subject to the “standards of conduct” set forth in sections 24-18-109(2)(b) and 24-18-103, C.R.S. Colo. Const. art. XXIX § 5(1).

29. The IEC has jurisdiction over ethical “standards of conduct”, which the Colorado Supreme Court has defined as those standards of conduct which “relat[e] to activities that could allow covered individuals to improperly benefit financially from their public employment.” *Gessler v. Smith*, 419 P.3d 964, 975 (Colo. 2018).

30. Allegations under section 24-18-103, C.R.S. that a public official used public employment for improper personal financial gain “fall within the ambit of the IEC’s jurisdiction under article XXIX, section 5.” *Gessler*, 419 P.3d at 972.

a. Section 24-18-109(2)(b), C.R.S.

31. Section 24-18-109(2)(b), C.R.S. provides that a local government official shall not “[p]erform 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”.

32. Violation of any act enumerated in section 24-18-109, C.R.S. constitutes a breach of the public trust. § 24-18-109(a), C.R.S.

33. Although section 24-18-109, C.R.S. imposes criminal liability for proof of violation beyond a reasonable doubt, the IEC applies a preponderance of the evidence standard of proof for ethical violations unless it determines that a higher standard is warranted. Colo. Const. art. XXIX, § 5(3)(e).

34. The IEC finds that a preponderance of the evidence standard is warranted in this case.

35. The IEC finds that Mrs. Ricotta did not have a “substantial financial interest” in the Brotherhood of the 74 at the time she recorded vacation of the alleyway in Blocks 4 and 5 in November 2016 without authorization.

36. The IEC also finds that Mrs. Ricotta was not “engaged as counsel, consultant, representative or agent” for the Brotherhood of the 74 in November 2016. Although Mrs. Ricotta had filed a building permit on behalf of the Brotherhood of the 74 earlier that year, there

was no evidence presented at hearing that she was a representative or agent for the organization on an ongoing basis.

37. Because Mrs. Ricotta did not have a substantial financial interest in, and was not a representative or agent of, the Brotherhood of the 74, the IEC need not consider whether her actions in recording the vacation of the alleyway without authorization constituted an “official act” within the meaning of section 24-18-102, C.R.S.

38. Accordingly, the IEC finds that Mrs. Ricotta’s actions in recording the vacation of the alleyway on November 15, 2016 do not constitute a violation of section 24-18-109(2)(b), C.R.S.

b. Section 24-18-103, C.R.S.

39. Section 24-18-103, C.R.S. provides that public employment “is a public trust” and that government employees “shall carry out [their] duties for the benefit of the people of the state.” *Id.*; *see also Gessler*, 419 P.3d at 972.

40. Sections 31-4-110 and 31-4-305, C.R.S., set forth the duties of a city (or town) clerk, including the requirement of affixing the city seal to all documents authenticated by the city and the duty to make a true and accurate record of all proceedings and actions by a board of trustees.

41. Mrs. Ricotta’s actions in recording vacation of the alleyway on November 15, 2016 certainly constitute a poor performance of her duties as town clerk. But the Commission does not believe they rise to the level of a breach of public trust sufficient to constitute an ethics violation. *Cf.*, *Gessler*, 419 P.3d at 972. Mrs. Ricotta testified that she was attempting to complete a task efficiently, and failed to get the proper authorization to do so. While the IEC views that explanation with skepticism, given the timing of Mr. Ricotta’s written request for line vacation and the timing of the recording, Mrs. Ricotta’s testimony went uncontroverted at hearing. Further, the IEC’s constitutional mandate and jurisdiction do not include ensuring that local government employees perform their job duties correctly. Unless a miscarriage of those duties constitutes a breach of public trust, *see Gessler*, 419 P.3d at 972, the IEC will not find a statutory violation.

42. Mrs. Ricotta also recorded a vacation of the alleyway on December 6, 2016, which turned out to be invalid. However, at that time, Mrs. Ricotta was acting with the

authorization of and pursuant to the direction of the town trustees, and her actions do not constitute a breach of the public trust.

43. Accordingly, the IEC finds that Mrs. Ricotta's actions in recording vacation of the alleyway on November 15, 2016 and December 6, 2016 do not constitute a violation of section 24-18-103, C.R.S.

THEREFORE, the Commission finds there was no violation of any ethical standard of conduct by Respondent Lucinda Ricotta, and dismisses Complaint 17-25.

The Independent Ethics Commission

April Jones, Chair, voting to find no ethical violations at the Commission's March 18, 2019, meeting, but not participating in adoption of the written opinion

Jo Ann Sorensen, Vice-Chair

William Leone, Commissioner

Matt Smith, Commissioner, dissenting

DATED: April 22, 2019

Commissioner Matt Smith, DISSENTING.

I disagree with the majority and find that the actions of Respondent, Lucinda Ricotta, were a conflict of interest with her duties as measured by the standards of section 24-18-109(2)(b) and that she breached the public trust standards under section 24-18-103, C.R.S., for failure to carry out her duties pursuant to §§ 31-4-110 and 31-4-305, C.R.S. Having similar parties and similar facts, Complaints 17-25 and 17-31 were heard together. My rationale for finding an ethical violation in this case against the Respondent, Lucinda Ricotta, pursuant to the section 24-18-109(2)(b) standards is similar to the findings made by the majority against Respondent, Steve Ricotta, in Complaint 17-31. I will highlight additional facts and rationale to support my conclusion on the conflict of interest standard, before moving on to the breach of trust standard.

As an employee and Town Clerk, Lucinda was a governmental employee pursuant to Colo. Const. Art. XXIX, Section 2(1). (Stipulation 4). On November 15, 2015, she prepared and filed two documents (Reception #944789 and Reception #944789) (Exhibit J) with the Fremont

County Clerk and Recorder. Although neither document was signed, the documents were prepared, delivered, and filed by Lucinda Ricotta with the Town Seal applied by Lucinda Ricotta. The delivery, filing and application of the Town Seal prior to any vote or authorization by the Trustees of the Town of Williamsburg were official acts.

While Mr. Ricotta argues that the Brotherhood of the 74 never asked for an alleyway vacation, requesting instead lot line adjustments, the expectation was that the alleyway for the Brotherhood of the 74, Lots 4-20, Block 5, Colorado Fuel and Iron Company Addition, Town of Williamsburg, Colorado would be vacated. Lucinda Ricotta admits that a prior request from Donna Duncan to vacate the same alleyway for Block 4, Exhibit H, also bears Lucinda Ricotta's hand-written notes that it could not be done because it contained a public right of way. Both Lots 4 and 5 had public alleyways, and Lucinda Ricotta had notice that vacation of the alleyways would require more than a clerical act.

Lucinda Ricotta is not a member or officer of the Brotherhood of the 74. However, on July 25, 2016 she did complete an Application for Building and Zoning Permit for the Brotherhood of the 74, executing the document "Lucinda Ricotta for Steve Ricotta." (Stipulation 6 and Exhibit F). On its face, the document may not convey sufficient information as to her capacity to act as an agent for the Brotherhood of the 74. However, Lucinda Ricotta responded at the hearing to direct questioning about the application to the effect that this is a small town and that's how things get done. At least in Williamsburg, I must conclude that Lucinda Ricotta has the "apparent authority" to act as an "agent" on the behalf of the Brotherhood of the 74.

I concur with the findings of the majority in Complaint 17-31 that the vacation of the alleyway was a substantial economic benefit to the Brotherhood of the 74. I view the official actions taken by Lucinda Ricotta, prior to approval and authorization, were an act substantially affecting a business or undertaking in which she was engaged as an agent.

Despite the cautions of the majority that we do not want to apply ethical standards to mere mistakes made in office, §24-18-103(1), C.R.S., requires that a . . . "public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state." The application of the town seal is an official act authorized by §31-4-110 (2), C.R.S. to be relied upon by other government agencies and the public. Its mere application sends the message that this is an act of government. The seal is not a personal tool to be applied whenever a City Clerk desires, especially when its use is not authorized or

would benefit an organization in which the Clerk has previously acted as agent. Likewise, the City Clerk is tasked with maintaining “true and accurate” records pursuant to §31-4-105, C.R.S. I find that Lucinda Ricotta violated the public trust by preparing, delivering, and filing Exhibit J with the Town Seal on November 15, 2015.