

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 17-28

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN THE MATTER OF: JULIE COZAD

This matter comes before the Independent Ethics Commission (“IEC”) pursuant to a complaint filed by Ellen DeLorenzo (“Complainant”) against Julie Cozad, a former county commissioner in Weld County. Complainant alleged that Ms. Cozad accepted a gift valued above the constitutional gift ban limit during her tenure as county commissioner, in violation of Section 3 of Article XXIX of the Colorado Constitution.

A lengthy challenge to the jurisdiction of the IEC over Ms. Cozad ensued. Weld County is a home rule county and § 7 of Article XXIX exempts the officials and employees of home rule cities and counties from IEC jurisdiction if the home rule entity adopts provisions “address[ing] the matters covered by this article.” Colo. Const. art. XXIX, § 7. In an initial jurisdictional determination, the IEC exercised jurisdiction over the complaint and issued a written order finding that Weld County had not addressed the matters in Article XXIX. Thereafter, Ms. Cozad filed a Rule 21 petition to the Colorado Supreme Court, which was denied. The IEC issued a Notice of Issues for Hearing informing the parties that the IEC would consider the allegations of Complainant under § 3(2) of Article XXIX, and § 24-18-104(1)(b), C.R.S. Then, a party in another case challenged the same jurisdictional issue. *See In the Matter of Complaints 16-02 and 17-14, Michael Dunafon*. The IEC stayed this case when the district court in *Dunafon* found the IEC lacked jurisdiction. On appeal, *Dunafon* resulted in a remand to the IEC, rather than a decision on the home rule jurisdiction issue. Thereafter, the IEC resumed its consideration of this case.

On June 10, 2021, the IEC held an evidentiary hearing to determine whether Ms. Cozad violated the constitutional and statutory provisions set forth in the Notice of Issues for Hearing. The IEC also heard and considered the legal arguments of the parties regarding home rule jurisdiction. For the reasons set forth below, the IEC affirms its initial finding of jurisdiction

over Ms. Cozad. The IEC also finds that Ms. Cozad violated Section 3 of Article XXIX. Because it finds a violation of the constitutional gift ban, the IEC does not reach the issue of whether Ms. Cozad's conduct also violated the statutory provision.

I. FINDINGS OF FACT

a. Jurisdiction

1. On January 27, 2017, Ms. Cozad was a commissioner of Weld County.
2. As a county commissioner, Ms. Cozad was a local government official who would ordinarily fall under the IEC's jurisdiction pursuant to Colo. Const. art. XXIX, § 2(3), absent satisfying the exemption set forth in § 7.

b. Weld County Code and Charter Provisions

3. On January 27, 2017, Weld County had a purported ethics code applicable to county employees and officials.¹ Those code provisions specifically stated Weld County's intent to exempt employees and public officials from Article XXIX. *See* Weld County Code, § 2-2-150 (2017).

4. Through § 2-2-150, Weld County subjected its public officials to one provision of its code (the remainder of which is applicable only to Weld County employees). That provision is § 3-3-10.A.10, which prohibits "[a]ccepting bribes, money, property or services of value in the course of employment." ("Weld County Gift Provision").

5. The Code did not provide a complaint process for members of the general public, but provided that "[e]mployees may report misconduct of a department head or elected official to the Department of Human Resources." Weld County Code, § 3-3-20 (2017).

6. The Code did not provide a penalty for violation of the Weld County Gift Provision, except that "appropriate disciplinary action may be taken." Weld County Code, § 3-3-20. However, the Department of Human Resources did not have authority to discipline or penalize elected public officials. *See* Weld County Code § 3-1-30.A.3 (2017). The Code provides that public officials may take disciplinary actions against county employees, but does

¹ On November 7, 2017, Weld County voters passed a charter amendment to make Weld County elected officers and employees subject to the IEC's jurisdiction. The amendment repealed both § 2-2-150 of the County Code and § 16-9 of the County Charter. However, because the alleged conduct predated those amendments, the IEC is called to consider whether the code provisions in effect prior to November 7, 2017 "address[ed] the matters covered by" Article XXIX. *See* Colo. Const. art. XXIX, § 7.

not provide a mechanism for disciplinary actions *against* public officials. *See* Weld County Code, § 3-3-20 (2017). The “discipline and grievance” provisions of the code clearly apply only to employees. *Id.* §§ 3-4-10 to 3-5-40 (2017).

7. Before it was repealed by Weld County voters, Section 16 of the Weld County Charter prohibited county officers and employees from having any interest in any enterprise or organization doing business with Weld County “which might interfere with the unbiased discharge of his [or her] duty to the public and the best interest of the County.” Weld County Charter, § 16-9 (2017) (“Business Conflict of Interest Provision”).

8. Under Section 16, the Weld County Council was the entity charged with reviewing, investigating, deciding, and resolving “possible conflict[s] of interest” between county officers and enterprises or organizations doing business with Weld County. Weld County Charter, § 16-9 (2017).

9. The Weld County Council is a separate body from the Board of County Commissioners.

10. There was no provision of Weld County Code or Charter granting the County Council jurisdiction over complaints alleging violations of the Weld County Gift Provision. The County Council had no jurisdiction to consider such complaints, investigate such complaints, render filings regarding such complaints, or impose penalties for violations.

11. There was no process set forth in code or charter for filing a complaint with the County Council.

12. There was no codified penalty provision or discipline process for public officials who violated either the Weld County Gift Provision or the Business Conflict of Interest Provision.

c. Northern Colorado Medical Center Foundation Gala.

13. On January 27, 2017, Ms. Cozad attended the Northern Colorado Medical Center (“NCMC”) Foundation Gala with her husband.

14. The Gala was a fundraiser to benefit NCMC, a hospital in Greeley.

15. Noble Energy was an oil and gas production and development company in Weld County.

16. Noble Energy was the event sponsor, contributed \$25,000 to the Gala, and received two reserved tables seating ten persons each at the event.

17. Ms. Cozad and her husband were invited by Noble Energy to attend and sit at one of Noble Energy's tables.

18. Ms. Cozad and her husband accepted Noble Energy's invitation.

19. Ms. Cozad testified at hearing, and that testimony was undisputed, that her husband was on the NCMC Board of Trustees, and all Board of Trustees members could attend the Gala free of charge.

20. Members of the public could also attend the Gala, at a minimum ticket price/donation of \$275.00 per person.

21. Ms. Cozad was advised by the Weld County attorney, Bruce Barker, that she could attend the event and should only pay for the "actual" cost of her and her husband's meal, at \$65.00 to \$70.00 per person. That per-meal cost estimate was provided to Ms. Cozad by a Noble Energy representative.

22. Ms. Cozad thereafter wrote a check to Noble Energy for \$150.00.

23. The check was never cashed by Noble Energy.

24. Separately, Ms. Cozad's husband made a donation of \$200.00 to NCMC. Ms. Cozad testified that donation was not intended to cover any portion of the cost of tickets to the Gala.

d. Complainant's Attempt to File a Complaint with Weld County.

25. When Complainant appeared at a County Council meeting and attempted to present a complaint regarding the conduct underlying this case, the County Council president merely responded that he "saw no ethical violations."

26. Complainant later received an email from Bruce Barker, the same attorney who had advised Ms. Cozad on accepting the tickets, explaining that *he* did not find a violation of the Weld County Gift Provision, based on his representation that "Commissioner Cozad and her husband paid for their meals at the Gala and made a \$220 donation to the NCMC Foundation [the beneficiary of the event]."²

² In characterizing the Cozads' donation to NCMC, Mr. Barker included \$20.00 Ms. Cozad paid for a wine pull at the event.

e. Procedural History.

27. Complainant filed her complaint with the IEC on July 21, 2017, alleging that Ms. Cozad and her husband's attendance at the NCMC Gala constituted a gift in violation of Article XXIX because Noble Energy covered the cost of their attendance.

28. Because Weld County is a home rule county, the IEC requested briefing from the parties on the jurisdictional issue by November 29, 2017.

29. The IEC issued its preliminary jurisdictional order on February 12, 2018.

30. Ms. Cozad filed a Rule 21 petition to the Colorado Supreme Court on March 19, 2018.

31. The Colorado Supreme Court denied Ms. Cozad's Rule 21 petition on March 22, 2018.

32. On October 22, 2018, the IEC issued a Notice of Issues for Hearing.

33. On January 3, 2019, the issue of the IEC's jurisdiction over public officials of home rule entities was addressed in an interlocutory appeal of another case, *Dunafon v. Jones*, No. 18CV32664 (Denver Dist. Ct.). In that case, the district court found that the IEC did not have jurisdiction over a public official of a home rule city.

34. On January 11, 2019, Ms. Cozad filed a motion to dismiss based on the district court's decision in *Dunafon v. Jones*. The IEC vacated the hearing previously scheduled in this case and held Ms. Cozad's motion in abeyance pending its appeal of the *Dunafon* district court decision.

35. On March 26, 2020 the Colorado Court of Appeals issued its decision vacating the decision of the district court in *Dunafon v. Jones*, No. 2019CA321, on the basis that no final order of the IEC had issued and the district court therefore lacked subject matter jurisdiction. The Court of Appeals also denied a petition for rehearing and stayed the mandate pending filing of a petition for certiorari.

36. On November 9, 2020, the Colorado Supreme Court denied the petition for certiorari. *Dunafon v. Jones*, No. 2020SC411.

37. The Court of Appeals remanded the *Dunafon* case to the IEC, and the IEC resumed its consideration of this case, treating Ms. Cozad's previous motion to dismiss as mooted by the Court of Appeals' vacation of the *Dunafon* district court decision.

38. On June 9, 2021, one day before hearing, Ms. Cozad filed a renewed motion to dismiss, this time alleging that the IEC's exercise of jurisdiction over Cozad constituted a violation of due process.

39. The IEC considered Ms. Cozad's motion during the June 10, 2021 hearing, and addresses it herein.

II. CONCLUSIONS OF LAW

a. Ms. Cozad's Due Process Claim

40. In her renewed Motion to Dismiss and at hearing, Ms. Cozad argued that the IEC's assertion of jurisdiction over her constitutes a violation of her due process rights.

41. Ms. Cozad cited no legal authority, either in her Motion or at hearing, for her due process argument. *See* IEC Rule 7.5(A)(1); C.R.C.P. 121 § 1-15(3).

42. The IEC's assertion of subject matter jurisdiction over Ms. Cozad is not a violation of her due process rights. Procedural due process requires notice and an opportunity to be heard, both of which Ms. Cozad received vis-à-vis the Notice of Issues for Hearing and the June 10, 2021 hearing.³ *See Bourie v. Dept. of Higher Educ.*, 929 P.2d 18, 22 (Colo. App. 1996); *see also Gessler v. Smith*, 419 P.3d 964, 975 (Colo. 2018).

43. The IEC's application of § 7 of Article XXIX is the inevitable result when, as here, a complaint is filed with the IEC against an employee or official of a home-rule entity. To the extent Ms. Cozad believed herself to be exempt based on Weld County's code provisions, she offers no legal authority for the assertion that her understanding creates a due process violation on the IEC's part. No wholesale exemption for employees or officials of home rule entities exists in Article XXIX.

44. Even if Ms. Cozad has alleged a valid due process claim based on her lack of knowledge that the IEC would apply the standards of conduct set forth in Article XXIX to her, she failed to allege any prejudice arising from that allegedly deficient notice. Thus, no due process violation has occurred. *See Gessler*, 419 P.3d at 974-75 ("Crucially, the Secretary of State identifies no examples of facts, provisions, or rules that were raised at or after the hearing for which the Secretary did not have an opportunity to prepare a defense.").

³ In addition, Ms. Cozad received notice of the complaint against her and the right to respond. *See* IEC Procedural Rule 7(J). The IEC also solicited briefing of the parties on the jurisdictional issue before making its initial jurisdictional determination.

b. IEC Jurisdiction Over Ms. Cozad

45. In passing Article XXIX, the voters of Colorado intended to create “specific standards to guide [the] conduct” of public officers, members of the general assembly, local government officials, and government employees “to ensure propriety and to preserve public confidence.” Colo. Const. art. XXIX, § 1(a), (e).

46. The voters also intended to create “a penalty mechanism to enforce those standards.” Colo. Const. art. XXIX § 1(e).

47. The goal of creating specific standards of conduct was so that the conduct of government officials and employees would “hold the respect and confidence of the people” and “carry out their duties for the benefit of the people of the state.” Colo. Const. art. XXIX, § 1(a), (b).

48. Article XXIX contains a specific carve-out provision that allows home rule cities and counties to exempt their employees and public officials from IEC jurisdiction, if the home rule entity “ha[s] adopted charters, ordinances, or resolutions that address the matters covered by this article.” Colo. Const. art. XXIX, § 7.

49. When the IEC receives a complaint against a public officer or employee of a home rule entity, it must decide whether to exercise jurisdiction over that individual. Therefore, the IEC must look to whether the home rule entity has “address[ed] the matters covered by [Article XXIX].”

50. In interpreting that language, the IEC looks first to the plain language of the text and accords words their plain and ordinary meaning. *Bruce v. City of Colo. Springs*, 129 P.3d 988, 992 (Colo. 2006). In construing the plain and ordinary meaning of that text, the IEC is informed by the intent of the electorate in adopting the amendment. *Id.*; *Gessler*, 419 P.3d at 966-67, 970 (Taking a holistic approach to interpreting Article XXIX and explaining, “[b]ecause article XXIX was added to the state constitution through a constitutional amendment adopted by citizen initiative, our duty is to give effect to the electorate’s intent in enacting the amendment.”).

51. Where the language of a constitutional provision is ambiguous, a reviewing court (and, in this case, the IEC) looks to the article as a whole to “harmonize all of the contained provisions,” as well as considering “the objective sought to be achieved and the mischief sought to be avoided by the measure.” *Bruce*, 129 P.3d at 992; *Patterson Recall Comm., Inc. v. Patterson*, 209 P.3d 1210, 1214 (Colo. App. 2009).

52. Ms. Cozad urges the IEC to find that the § 7 carveout applies because Weld County purported to address the matters in Article XXIX in § 2-2-150 of its County Code. Section 2-2-150 was the provision that mentioned Article XXIX and included elected officials within the prohibition on “[a]ccepting bribes, money, property or services of value in the course of employment.” Ms. Cozad argues that, because Weld County acted to adopt the Weld County Gift Provision, Section 7 applies.

53. Viewed in isolation, the phrase “address the matters covered by this article” appears ambiguous, because it is “reasonably susceptible to more than one interpretation.” *Zaner v. City of Brighton*, 917 P.2d 280, 283 (Colo. 1996). It is unclear whether the voters intended to exempt home rule entities that addressed any of the matters in Article XXIX, all of the matters in Article XXIX, or whether it would be sufficient to simply reference them in some way.

54. Giving meaning to each word in § 7, home rule entities must “address the matters covered by this article.” Colo. Const. art. XXIX, § 7 (emphasis added); *see Rocky Mtn. Gun Owners v. Polis*, 467 P.3d 314, 330 (Colo. 2020) (reviewing courts should avoid statutory constructions that would render any word or phrase superfluous). Thus, the home rule entity’s provisions must provide some mechanism to regulate “activities that allow covered individuals working in government, including elected officials, to gain improper financial benefit through their public employment,” which is the “overarching focus of Article XXIX.” *Gessler*, 419 P.3d at 966-67.

55. In view of the overarching focus of Article XXIX, the IEC finds that the following provisions of Article XXIX are essential to this regulation:

- (1) a gift ban, *see* § 3;
- (2) a complaint and investigative process, *see* § 5(3)(a), (c);
- (3) a penalty provision or discipline process, *see* §§ 5(3)(d), 6; and
- (4) an independent decisionmaker, *see* § 5(1), (2).

These provisions must be included in order to trigger the exemption in § 7 because, without any one of those matters “covered by this article,” a home rule entity’s purported regulation of ethics lacks effect. This interpretation “considers Article XXIX as a whole and aligns with ‘the objective sought to be achieved and the mischief sought to be avoided by the amendment.’” *Gessler*, 419 P.3d at 971 (*quoting Zaner*, 917 P.2d at 283). The IEC does not consider whether

the locality's code or charter provisions are adequate, but the IEC does look to the plain language of the locality's code or charter to determine whether such provisions are in place.

56. The Weld County code at issue here had two ethics provisions applicable to public officials in its Code and Charter: The Weld County Gift Provision and the Business Conflict of Interest Provision.

57. The Weld County Gift Provision is different than the gift ban set forth in Article XXIX, in some ways more stringent and in some ways more lenient. In its initial jurisdictional determination, the IEC found that provision inadequate. However, the IEC recognizes here that the standards of conduct a home rule entity may adopt may be less stringent than those set forth in Article XXIX so long as the overarching purpose of Article XXIX is achieved. *See Colo. Const. art. XXIX, § 7* (specifying that *any* county or municipality “may adopt ordinances or charter provisions ... that are more stringent than any of the provisions contained in this article” but home rule entities need only “address the matters” in Article XXIX).

58. On balance, the Weld County Gift Provision targeted the core conduct that Article XXIX was directed at—accepting things of value in the course of employment, which could allow public officials or employees to gain improper financial benefit through their public employment. *See Gessler*, 419 P.3d at 966-67.

59. However, even assuming that the Weld County Gift Provision addresses the matters in § 7, Weld County did not have a discipline or penalty mechanism for enforcement of that provision as to elected public officials. There was no means of filing a complaint regarding a violation of the Weld County Gift Provision, no investigative or review process, no body granted the authority to review such a complaint, and no penalty or discipline process set forth in any provision of Weld County's Code or Charter. And although the Code referenced an employee's ability to “report misconduct of a department head or elected official to the Department of Human Resources,” the Department of Human Resources did not have any authority over elected officials. *See Weld County Code § 3-1-30.A.3*.

60. While Weld County's Business Conflict of Interest Provision authorized the County Council to review, investigate, decide and resolve questions “regarding possible conflict[s] of interest between any county officer... and any enterprise or organization doing business with Weld County,” there was no similar grant of authority to review a complaint regarding, let alone enforce, the Weld County Gift Provision. Although Complainant tried to

bring the matter to the County Council's attention, the Council had no review or enforcement authority over the Weld County Gift Ban Provision.⁴

61. The IEC finds that Weld County's Code and Charter provisions, as they existed in 2017, did not address the matters set forth in Article XXIX. The IEC therefore has jurisdiction over this complaint, and the provisions of Article XXIX apply to Ms. Cozad.

c. Ms. Cozad's Attendance at the NCMC Gala

62. Section 3(2) of Article XXIX provides, "No ... local government official..., 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, rewards, promises or negotiations of future employment, favors or services, honoraria, travel, entertainment, or special discounts, from a person, without the person receiving lawful consideration of equal or greater value in return..." Colo. Const. art. XXIX, § 3(2). The adjusted gift ban limit applicable in 2017 was fifty-nine dollars (\$59). Colo. Const. art. XXIX, § 3(6); IEC Position Statement 15-01.

63. Ms. Cozad admits that she attended the NCMC Fundraiser as a guest of Noble Energy, and that her husband's \$200.00 donation to NCMC was not intended to cover the cost of tickets to the Gala.

64. Ms. Cozad's ticket to the Gala was paid for by Noble Energy, by and through Noble Energy's sponsorship of the Gala and receipt of tables by virtue of that sponsorship.

65. Although Ms. Cozad also accepted receipt of a ticket to the Gala on behalf of her husband, the evidence was undisputed that Larry Cozad was an NCMC Board of Trustees member and would not have had to pay for a ticket, regardless. Accordingly, Ms. Cozad did not receive a "gift or other thing of value" in the form of Mr. Cozad's ticket.

66. To avoid a covered individual's receipt of benefits not available to the general public by virtue of their public employment, the IEC has historically required covered

⁴ Ms. Cozad claimed at hearing that the Complainant's complaint was submitted to and heard by the County Council. However, that is a mischaracterization of what actually happened: Complainant made a public statement at a County Council meeting, was told there was no violation, and then was later emailed by the same attorney who advised Ms. Cozad stating that *he* did not find an ethical violation. Complainant was never able to file a complaint and the County Council never adjudicated one, nor did they have the authority to do so.

individuals attending events to pay the minimum ticket price at which tickets are offered to the general public. *See* Letter Ruling 12-01; Advisory Opinion 10-14. This is because the ticket’s “fair market value” or “aggregate actual cost,” as those terms are used in § 3(2) of Article XXIX, is “the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm’s-length transaction; the point at which supply and demand intersect.” *See* Actual Value and Fair Market Value, Black’s Law Dictionary (11th ed. 2019). Further, § 3(2) of Article XXIX both prohibits “special discounts” *and* requires “lawful consideration of equal or greater value in return,” both of which counsel against allowing a covered individual to pay a discounted rate for something of value.

67. In accepting Noble Energy’s invitation to attend the Gala free of cost, Ms. Cozad both accepted and received a “thing of value” within the meaning of § 3(2) in the amount of \$275.00.

68. Ms. Cozad’s payment of \$150.00 to Noble Energy did not constitute “lawful consideration of equal or greater value” for her ticket to the Gala. The cost of admission was \$275.00.

69. No exception to § 3(2) applies to the facts of this case. *See* Colo. Const. art. XXIX, § 3(3).

70. While the IEC appreciates that Ms. Cozad received erroneous advice from counsel, there is no exception in Article XXIX for advice of counsel or other mistake of law. There is no intent requirement.

71. Ms. Cozad’s acceptance of her ticket to the Gala from Noble Energy constituted a violation of § 3(2) of Article XXIX.

72. Because the IEC finds a violation of § 3(2), the IEC does not consider whether Ms. Cozad’s conduct also constitutes a violation of the gift prohibition found in § 24-18-104(1)(b), C.R.S.

d. Penalty

73. Section 6 of Article XXIX provides that the penalty for a violation of Article XXIX is “double the amount of the financial equivalent of any benefits obtained by such actions.” Colo. Const. art. XXIX, § 6. That payment is due to “the state or local jurisdiction,” depending on whether the covered individual is a state or local official or employee.

74. The benefit received by Ms. Cozad was the fair market value cost of her ticket to the Gala, \$275.00, less the amount of money Ms. Cozad already paid to Noble Energy, \$150.00, which equals \$125.00.⁵ The total amount of the penalty under § 6 is therefore \$250.00.

THEREFORE, the IEC finds by a preponderance of the evidence that Ms. Cozad violated § 3(2) of Article XXIX and that a penalty of \$250.00 is warranted. The penalty is due to Weld County upon issuance of this decision, and Ms. Cozad shall provide the IEC with a copy of proof of payment.

THE INDEPENDENT ETHICS COMMISSION

Elizabeth Espinosa Krupa, *Chair*

Selina Baschiera, *Commissioner*

Debra Johnson, *Commissioner*, concurring

DATED: June 18, 2021

JOHNSON, DEBRA, concurring.

I concur with the result in this case, both as to the IEC's exercise of jurisdiction over Ms. Cozad and its finding of a violation. I write separately only to set forth the test I believe should apply when the IEC exercises jurisdiction over elected officials and employees of home rule entities. Based on the language in the "Purposes and Findings" section of Article XXIX, it is clear to me that home rule cities and counties must have adopted code or charter provisions containing both: (1) specific standards of ethical conduct; and (2) a penalty mechanism. *See* Colo. Const. art. XXIX, § 1(e) ("To ensure propriety and to preserve public confidence, [local government officials and government employees] must have the benefit of specific standards to guide their conduct, and of a penalty mechanism to enforce those standards.").

Therefore, I would inquire only whether Weld County had code or charter provisions setting forth both specific standards of ethical conduct and a penalty mechanism. I agree with the majority's approach of not reviewing the sufficiency of those standards. I also agree with the

⁵ The IEC recognizes that the check from Ms. Cozad to Noble Energy was never cashed. However, the IEC finds that error or omission should not be attributed to Ms. Cozad for purposes of assessing a penalty.

majority's finding that Weld County's code and charter provisions lacked a penalty mechanism, and thus reach the same result as the majority above.