

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 17-31

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN THE MATTER OF: STEVE RICOTTA

This matter comes before the Independent Ethics Commission (“Commission”) on a complaint filed by Stephen Harrison, Eva Mares, Ronald Mares, Steven Gardner, and Shane Espinoza (“Complainants”)¹ against Steve Ricotta, a trustee for the town of Williamsburg, Colorado. Complainants alleged various ethical violations surrounding Mr. Ricotta’s votes as a town trustee. In its Notice of Issues for Hearing, the Commission narrowed the issues for hearing to alleged conflicts of interest under sections 24-18-109(2)(b) and (3)(a), C.R.S., which the Commission has jurisdiction over 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 Mr. Ricotta violated section 24-18-109(2)(b), C.R.S., when he voted in favor of vacating an alleyway that benefitted an organization for which he was an agent or representative, the Brotherhood of the 74. The Commission determined that Mr. Ricotta violated section 24-18-109(3)(a), C.R.S., when he voted in favor of retaining his wife, Lucinda Ricotta, as town clerk. The Commission has determined that Mr. Ricotta did not violate section 24-18-109(3)(a), C.R.S., when he voted in favor of bonuses for town employees, including his wife, because those bonuses had already been approved prior to his tenure. The Commission finds that no penalty should be imposed pursuant to section 6 of Article XXIX of the Colorado Constitution.

I. Findings of Fact

1. Mr. Ricotta was elected as a town trustee for the town of Williamsburg, Colorado on November 8, 2016, and was sworn into office on December 5, 2016.

¹ Mr. Espinoza later withdrew from participating in the complaint process.

2. Mr. Ricotta was also, at all times relevant to the complaint, President of the Royal Gorge Chapter of the Brotherhood of the 74, a motorcycle-riding organization.

3. Mr. Ricotta was, at all times relevant to the complaint, married to Lucinda Ricotta, who was employed by the town of Williamsburg as town clerk.

4. 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 “Colorado Fuel and Iron Co.’s” addition to Williamsburg.

5. The Duncans’ request was based on their desire to develop the parcel and comply with mandatory set-backs.

6. That alleyway bisected the Duncans’ properties, Lots 3-7 and 11-16 in Block 4.

7. The alleyway also bisected the 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. Over the next couple of months, the Brotherhood of the 74 built a structure on their 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 the Brotherhood of the 74 belongs to the national chapter of that organization, which has about 175 members. Mr. Ricotta is a member of that organization.

12. On November 14, 2016, Mr. Ricotta filed a request with 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. On November 22, 2016, the Duncans again filed a written request for vacation of the alleyway on Block 4.

17. At the 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.

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

19. 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.”

20. At the November 7, 2016 town of Williamsburg meeting, prior to Mr. Ricotta’s tenure, the town trustees had voted to give town employees a \$400.00 bonus.

21. At the December 5, 2016 meeting, the town trustees—including Mr. Ricotta—again voted to give town employees a \$400.00 bonus. The reason for the duplicate votes is not apparent from the record.

22. Mrs. Ricotta testified at hearing that the \$400.00 bonus approved at the November 7, 2016 meeting and the \$400.00 bonus approved at the December 5, 2016 meeting were one and the same.

23. Mrs. Ricotta testified that she received the \$400.00 bonus sometime before December 24, 2016.

24. Also at the December 5, 2016 meeting, the town trustees—including Mr. Ricotta—voted to retain the town employees.

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

26. 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.

27. 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.

28. 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.

29. The minutes of the April 3, 2017 meeting reflect that the vote was 4-2, and Mr. Ricotta abstained.

30. Mr. Farringer testified at hearing that the town’s policies require every town trustee to vote on every issue, unless excused by the other town trustees; and that the town’s policies treat an “abstention” as a “yes” vote.

31. The town’s policies were not made a part of the record.

32. Mr. Ricotta testified that when he asked what he should do at the December 5, 2016 meeting because Mrs. Ricotta was his wife, Mr. Farringer and the other town trustees told him he was required to vote.

33. It is unclear from the record whether Mr. Ricotta considered the town policy in recusing from the April 3, 2017 vote.

II. Conclusions of Law

a. Jurisdiction

34. Mr. Ricotta is a town trustee and thus, a “local government official” within the meaning of Section 2 of Article XXIX of the Colorado Constitution. The Commission has jurisdiction over Mr. Ricotta pursuant to Section 5(1) of Article XXIX.

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

36. Mr. Ricotta is subject to the “standards of conduct” set forth in sections 24-18-109(2)(b) and (3)(a), C.R.S. Colo. Const. art. XXIX § 5(1).

37. 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).

38. 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.

39. 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”.

40. 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.

41. 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).

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

43. The IEC finds that, at the time of Mr. Ricotta’s December 5, 2016 vote regarding vacation of the alleyway in Blocks 4 and 5, Mr. Ricotta was a “representative[] or agent” for the Brotherhood of the 74 within the meaning of section 24-18-109(2)(b). Mr. Ricotta was the president of the Brotherhood of the 74. Mr. Ricotta signed the written lot line vacation requests to the town of Williamsburg on behalf of the Brotherhood of the 74. He was clearly acting on behalf of that organization.

44. The IEC finds that Mr. Ricotta’s December 5, 2016 vote regarding vacation of the alleyway was “an official act.” The statute defines “official act” as “any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.” § 24-18-102(7), C.R.S.

45. The IEC finds that Mr. Ricotta's vote directly and substantially affected the Brotherhood of the 74 to its economic benefit. Vacation of the alleyway increased the property's value by removing an encumbrance thereon. Mr. Ricotta testified at hearing that the Brotherhood of the 74 did not need the alleyway vacation to build its clubhouse, but, as demonstrated by the Duncans' request, vacation of the alleyway improved the development potential of the parcel.

46. Accordingly, the IEC finds that Mr. Ricotta violated section 24-18-109(2)(b), C.R.S.

47. The IEC finds that the testimony regarding the town of Williamsburg's policy—that every town trustee must vote on every matter—is mitigating but not determinative. First, that policy was not submitted into the record. Second, state law preempts town ordinances and/or policies where a local law conflicts with state law, and state law requires local government officials to recuse themselves where certain conflicts of interest exist. *See generally* § 24-18-109, C.R.S.; *Town of Frederick v. North Am. Res. Co.*, 60 P.3d 758 (Colo. App. 2002). The town of Williamsburg's policy, to the extent it conflicts with state law, is likely unlawful. Finally, while the IEC is sympathetic that Mr. Ricotta received bad advice from Mr. Farringer and his fellow trustees, such advice is not a defense to the statutory violation. At a minimum, Mr. Ricotta or the town council should have consulted the town's legal counsel before proceeding.

48. The Constitution requires the IEC to impose a penalty “for double the amount of the financial equivalent of any benefits obtained by [Respondent's] actions”. Colo. Const. art. XXIX, § 6.

49. No evidence was presented at hearing regarding the financial value of vacation of the alleyway. Accordingly, the IEC finds that no monetary penalty is appropriate for Mr. Ricotta's violation of section 24-18-109(2)(b), C.R.S.

b. Section 24-18-109(3)(a), C.R.S.

50. Section 24-18-109(3)(a), C.R.S., provides that a local government official “who has a personal or private interest in any manner proposed or pending before the government 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.”

51. The IEC finds that Mr. Ricotta had a “personal or private interest” in the retention of Mrs. Ricotta as town clerk. Mr. Ricotta testified that he had been married to Mrs. Ricotta for 35 years. Mr. Ricotta further testified that the couple had combined their finances. The nature of the Ricottas’ relationship alone is sufficient to demonstrate that Mr. Ricotta had a “personal or private interest” in her continued employment.

52. It was undisputed that, by voting for retention of all town employees at the December 5, 2016 meeting, Mr. Ricotta was voting to retain his wife as town clerk. While Mr. Ricotta’s relationship to Mrs. Ricotta was self-evident and did not require additional disclosure during the meeting, Mr. Ricotta should not have voted on the matter.

53. The IEC finds, however, that Mr. Ricotta’s vote to give town employees a \$400.00 bonus when that bonus had already been approved at a previous meeting prior to Mr. Ricotta’s tenure as town trustee does not constitute a violation of section 24-18-109(2)(b), C.R.S. The town had already taken official action, and Mr. Ricotta’s vote had no effect.

54. No evidence was presented at hearing regarding the financial value of retention of Mrs. Ricotta, and Mr. Ricotta’s vote was not determinative. Accordingly, the IEC finds that no monetary penalty is appropriate for Mr. Ricotta’s violation of section 24-18-109(3)(a), C.R.S.

THEREFORE, the Commission finds by a preponderance of the evidence that Mr. Ricotta violated sections 24-18-109(2)(b) and 24-18-109(3)(a), C.R.S. The Commission finds that no penalty is warranted.

The Independent Ethics Commission

April Jones, *Chair, concurring in part and dissenting in part*

Jo Ann Sorensen, *Vice-Chair*

William Leone, *Commissioner*

Matt Smith, *Commissioner*

DATED: April 22, 2019

Commissioner April Jones, CONCURRING IN PART AND DISSENTING IN PART.

I concur with the Commission’s finding that Mr. Ricotta violated section 24-18-109(3)(a), C.R.S. by voting to retain his wife, Lucinda Ricotta, as the town clerk. However, I

dissent insofar as the Commission finds a violation of section 24-18-109(2)(b), C.R.S., for Mr. Ricotta's December 5, 2016 vote regarding vacation of the alleyway.

I agree that Mr. Ricotta's vote constitutes an "official act" within the meaning of section 24-18-109(2)(b), C.R.S. I also agree that Mr. Ricotta was either a "representative" or "agent" of the Brotherhood of the 74 within the meaning of that provision. However, to find a violation, the statute requires that Mr. Ricotta's vote "directly and substantially affect[] to its economic benefit" the Brotherhood of the 74. § 24-18-109(2)(b), C.R.S. I do not believe that the benefit obtained by the Brotherhood of the 74 in this instance rises to a direct and substantial economic benefit.

The evidence demonstrates that the Brotherhood of the 74 had already built its clubhouse or meeting house on its property prior to vacation of the alleyway, and therefore did not have the same interest in its vacation as did the Duncans. There was testimony to the effect that vacation of the alleyway did not increase its property value in any measurable or tangible way. It seems undisputed that vacation of the alleyway, by uniting the Brotherhood of the 74's Lots 4 through 10 with Lots 11 through 17, tangentially increased the value of the property. But there is no evidence in the record that such benefit was either "direct" or "substantial". It was not direct in that the Brotherhood of the 74 did not receive any immediate or tangible benefit from vacation of the alleyway. And it was not substantial, because there was no proof that vacation of the alleyway resulted in a considerable increase in value of the Brotherhood of the 74's property. Given the evidence before the Commission, I cannot agree that Mr. Ricotta's conduct satisfied the standard necessary to find a violation of section 24-18-109(2)(b), C.R.S.