

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 19-26

ORDER OF DISMISSAL

IN THE MATTER OF: JOSEPH SALAZAR

This matter comes before the Independent Ethics Commission (“Commission”) on a complaint filed by Public Trust Institute (“Complainant”) against Joseph Salazar, former member of the Colorado House of Representatives. Complainant alleged that Mr. Salazar engaged in lobbying within two years of leaving office, in violation of section 4 of Article XXIX. Mr. Salazar moved to dismiss the complaint under C.R.C.P. 12(b)(1) and (5) for lack of jurisdiction and for failure to state a claim. *See* IEC Rule 7.5.H.

On October 20, 2020, the Commission held a hearing and deliberated on the merits of the complaint and motion to dismiss in public. At that hearing, Complainant voluntarily dismissed three of the four alleged violations against Mr. Salazar. For the reasons set forth below, the Commission determined that the allegations set forth in the complaint did not, as a matter of law, state a claim for relief on the remaining violation. Accordingly, Mr. Salazar’s motion to dismiss is granted under C.R.C.P. 12(b)(5) and IEC Rule 7.5.H.

I. Findings of Fact¹

a. Background

1. Mr. Salazar was a Colorado state representative from January 2013 to January 3, 2019.
2. Upon leaving office, Mr. Salazar, an attorney, was hired as executive director of Colorado Rising, a non-profit organization opposed to fracking.
3. Mr. Salazar is compensated for his work for Colorado Rising.

¹ Because the IEC resolves this case at the motion to dismiss stage, the IEC accepts all allegations in the complaint as true and views them in the light most favorable to Complainant for purpose of these Factual Findings. *See* C.R.C.P. 12(b)(5); *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011).

4. Mr. Salazar is not registered as a professional lobbyist with the Secretary of State's Office.

b. January 4, 2019 press conference

5. On January 4, 2019, Mr. Salazar held a Colorado Rising press conference on the steps of the State Capitol.

6. At that press conference, Mr. Salazar made statements to the effect that the Governor's Office belonged to the people of the state of Colorado and that Colorado Rising would hold the governor accountable.

c. March 4, 2019 press conference

7. On March 4, 2019, Mr. Salazar held a Colorado Rising press conference in a room at the State Capitol regarding Senate Bill 19-181 ("SB 19-181"). The press conference was streamed via Facebook Live to Colorado Rising members and supporters.

8. While Colorado Rising took no position on SB 19-181, Mr. Salazar discussed how citizens could contact specifically named state legislators to influence the passage of SB 19-181.

9. Neither Mr. Salazar nor Colorado Rising are listed in the database of lobbyist activity on SB 19-181.

d. August 8, 2019 email

10. On August 8, 2019, Mr. Salazar emailed ten current members of the Colorado General Assembly, urging legislation related to immigration reform.

11. Specifically, Mr. Salazar encouraged legislators to assert more state jurisdiction over private facilities in Colorado where immigrants were being held by federal authorities.

12. The email was sent from Mr. Salazar's law firm email account, jas@salazarlaw.net, and does not reference Colorado Rising.

e. August 14, 2019 press conference

13. On August 14, 2019, Mr. Salazar held a press conference in a committee room at the State Capitol regarding legal action that Colorado Rising had taken in response to the passage of SB 19-181.

14. Mr. Salazar obtained access to reserve the committee room via Rep. Jonathan Singer, a member of Colorado Rising.

15. Complainant does not claim that Mr. Salazar engaged in other instances of alleged lobbying in 2019.

f. Secretary of State complaint

16. Prior to filing its complaint with the IEC, Complainant also filed a complaint against Mr. Salazar with the Secretary of State (“SOS”).

17. The allegations in the SOS complaint were almost identical to those set forth in the IEC complaint, except that Complainant was focused on whether Mr. Salazar engaged in “lobbying” within the meaning of § 24-6-301(3.5), C.R.S., such that he was required to be registered as a “professional lobbyist” under § 24-6-301(6), C.R.S.

18. The SOS dismissed the complaint, finding that the January 4, August 8, and August 14, 2019 events did not constitute “lobbying” and that the March 4, 2019 event was lobbying, but fell within the “grassroots lobbying” exception contained in the SOS rules. *See* 8 CCR 1505-8, Rule 2.2.2.

II. Conclusions of Law

a. Colo. Const. art. XXIX, § 4

Section 4 of Article XXIX of the Colorado Constitution provides:

No statewide elected officeholder or member of the general assembly shall personally represent another person or entity for compensation before any other statewide elected officeholder or member of the general assembly, for a period of two years following vacation of office. Further restrictions on public officers or members of the general assembly and similar restrictions on other public officers, local government officials or government employees may be established by law.

b. § 24-6-301, C.R.S.

The Colorado Sunshine Act requires those who are “compensated by a client or another professional lobbyist for lobbying” to register as professional lobbyists. § 24-6-301(6), C.R.S.

“Lobbying” is defined in relevant part as:

[C]ommunicating directly, or soliciting others to communicate, with a covered official for the purpose of aiding or influencing:

(I) The drafting, introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, or veto by covered official on:

(A) Any bill, resolution, amendment, nomination, appointment, or report, whether or not in writing, pending or proposed for consideration by either

house of the general assembly or committee thereof, whether or not the general assembly is in session; or

(B) Any other matter pending or proposed in writing by any covered official for consideration by either house of the general assembly or a committee thereof, whether or not the general assembly is in session ...

§ 24-6-301(3.5), C.R.S.

The SOS has adopted a rule clarifying an exception found in federal law for “grassroots lobbying,” which provides:

If an activity that could otherwise be considered lobbying is performed by an employee only once a year, and the employee is not paid solely to lobby, then that activity is not considered lobbying. This exclusion from lobbying covers ‘grassroots’ lobbying by employees of an organization who contact members of the organization in response to a piece of legislation or rule.

8 CCR § 1505-8, Rule 2.2.2(a).

c. January 4, August 8, and August 14, 2019 events

19. At the hearing on Mr. Salazar’s Motion to Dismiss, Complainant conceded that the alleged instances of lobbying on January 4, August 8, and August 14, 2019 did not fit within the definition of “lobbying” in § 24-6-301(3.5), C.R.S. and Mr. Salazar was therefore not required to register as a professional lobbyist pursuant to § 24-6-301(6), C.R.S.

20. The IEC therefore dismisses the alleged violations against Mr. Salazar based on Complainant’s concessions and the IEC’s determination that no further investigation or hearing is warranted.

d. March 4, 2019 event

21. Complainant claimed that Mr. Salazar’s March 4, 2019 Facebook Live event on behalf of Colorado Rising regarding SB 19-181 constituted “lobbying” within the meaning of § 24-6-301(3.5), C.R.S., and no exception applies.

22. Mr. Salazar claimed that, even if his comments during the Facebook Live event could be construed as “soliciting others to communicate[] with a covered official for the purpose of aiding in or influencing” the passage of legislation, his actions fell within the “grassroots lobbying” exception in SOS Rule 2.2.2(a).

23. Under Section 4 of Article XXIX, the issue is whether Mr. Salazar “personally represent[ed]” another person or entity for compensation before a member of the general

assembly within the two-year period following Mr. Salazar leaving office. Colo. Const. art. XXIX, § 4.

24. The IEC has previously interpreted “personally represent” in Section 4 to mean that “any former elected office holders or members of the general assembly cannot accept employment that will also require their registration as a professional lobbyist under § 24-6-301.” *See* IEC Position Statement 09-02.

25. The Commission finds that Mr. Salazar’s solicitation of Colorado Rising members to contact specifically named state legislators regarding specific legislation, SB 19-181, falls within the definition of “lobbying” set forth in § 24-6-301(3.5), C.R.S.

26. The IEC considers regulations and opinions promulgated and issued by the SOS that relate to lobbyists “highly persuasive in applying and interpreting who is a ‘professional lobbyist.’” IEC Position Statement 09-02.

27. The fact that Mr. Salazar was not paid solely to lobby does not end our inquiry. That fact is merely the first element of the grassroots lobbying exception.

28. Nevertheless, Mr. Salazar also satisfies the second element of the grassroots lobbying exception, given that he engaged in a lobbying activity on behalf of Colorado Rising only once within a year.

29. The IEC finds the SOS’s application of that exception persuasive. First, the IEC has already interpreted § 4 to apply only to “professional lobbyists”—or those who should be registered as such—within the meaning of § 24-6-301(6), C.R.S. Second, the “grassroots lobbying” exception dovetails with the plain language of Section 4 of Article XXIX, which prohibits individuals who have held statewide office in the last two years from “personally represent[ing] another person or entity for compensation before any other statewide elected officeholder or member of the general assembly.” Mr. Salazar’s conduct did not require his registration as a professional lobbyist pursuant to § 24-6-301(6), C.R.S., *and* Mr. Salazar did not appear before any statewide elected officeholder or member of the General Assembly when he encouraged Colorado Rising members to contact their legislators regarding SB 19-181. Under either rationale, Mr. Salazar’s activities do not fall within the constitutional prohibition.

30. As a matter of law, the Complaint failed to state a claim upon which relief could be granted. The Complaint is dismissed pursuant to C.R.C.P. 12(b)(5).

31. The IEC rejects Mr. Salazar’s first basis for requesting dismissal, lack of subject matter jurisdiction under C.R.C.P. 12(b)(1) based on issue preclusion. Although the IEC considers Secretary of State decisions “highly persuasive,” *see* Position Statement 09-02, the IEC is not precluded from considering *ethical* complaints that involve the same universe of facts as a SOS opinion but may require application of different legal standards. *See Sunny Acres Villa, Inc. v. Cooper*, 25 P.3d 44, 47 (Colo. 2001) (issue preclusion bars re-litigation of identical legal issues).

32. Similarly, whether Complainant alleged facts sufficient to meet the jurisdictional prerequisite of pleading under C.R.C.P. 12(b)(1) is the flip side of the same coin of dismissal as C.R.C.P. 12(b)(5). Because the IEC’s findings of fact accept as true the allegations set forth in the Complaint, dismissal under C.R.C.P. 12(b)(5) is appropriate. *Medina v. State*, 35 P.3d 443, 452 (Colo. 2001) (“The primary difference between Rule 12(b)(1) and 12(b)(5) ... is that under Rule 12(b)(1) the trial court is permitted to make findings of fact. Under Rule 12(b)(5) it is not; it must take the allegations of the complaint as true and draw all inferences in favor of the plaintiff.”).

The Complaint is hereby DISMISSED for failure to state a claim pursuant to C.R.C.P. 12(b)(5).

THE INDEPENDENT ETHICS COMMISSION

Elizabeth Espinosa Krupa, *Chair*

William Leone, *Vice Chair*

Selina Baschiera, *Commissioner*

DATED: December 15, 2020

Commissioner Yeulin Willett recused himself from this decision.

Commissioner Debra Johnson did not participate in this decision.