

Independent Ethics Commission – Formal Complaint Form

Before the Independent Ethics Commission
of the State of Colorado

For Commission Use Only

Received date: 16-Oct-2020

Case. No.: 20-73

The Complainant is: Jim McMahon
(name)

Mailing Address: 1575 County Road 305
Westcliffe, CO 81252

Daytime telephone number: 719-783-0313

Email address: cbdfarmersofamerica@gmail.com

The Respondent is: Custer County Commissioner Tom Flower
(name)

Mailing Address: 205 S. 6th St.
Westcliffe, CO 81252

Daytime telephone number: 719-783-2552

Email address: tom@custercountygov.com

When did the alleged violation occur: April 2020 to present

Describe the specific acts or things complained of, with facts that provide a full understanding of the alleged violation(s). If possible, cite the specific ethical standards alleged to have been violated and describe how the violation(s) occurred. Use additional pages if necessary. Attach any documentary evidence you wish to submit.

See Attachment 1

Description of acts or things complained of (continued):

Advisement regarding remedies and penalties: Pursuant to Colo. Const. art. XXIX, § 6, a covered individual found to have breached the public trust for private gain is liable for double the amount of the financial equivalent of any benefits obtained by such actions. The manner of recovery and additional penalties may be provided by law. The Commission does not assess criminal penalties, award injunctive relief, or award damages to complainants.

I hereby acknowledge that the facts presented herein are true to the best of my knowledge, and I will cooperate in the process regarding this complaint and will appear at any proceeding of the Independent Ethics Commission if the complaint is scheduled for a hearing.

Signature: James B. McMahon

Attorney (if applicable): N/A

Dated at Westcliffe (City), Colorado, this 16th day of October, 2020.

Created by Article XXIX of the Colorado Constitution, the Independent Ethics Commission may review and hold hearings on matters falling within its jurisdiction as outlined in Article XXIX.

ATTACHMENT 1 TO IEC COMPLAINT

In C.R.S. Section 24 - 18 - 109. "Rules of conduct for local government officials and employees", Section 3 (a) reads: "A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing 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."

Republican, Tom Flower is a Custer County Commissioner. The Board of County Commissioners (BOCC) oversees the Custer County Public Health Agency ("CCPHA"). Commissioner Flower's wife, Cindi Flower, is an employee of the CCPHA. As such, it is inappropriate for Commissioner Flower to vote on any matters involving Mrs. Flower's employment. Yet, he has never recused himself from such discussions or votes, including but not limited to her compensation and the terms of her employment.

On _____, 2020 (**I will supplement this Attachment with the exact date**), the BOCC, in conjunction with the Custer County Unified School District, hired a public health liaison at \$30.00 an hour. A day or two before that information was made public, Mrs. Flower verbally demanded to Dr. Clifford Brown, the Director CCPHA, that her pay rate be increased from \$15.00 an hour to \$30.00 an hour "because that was the standard going rate." Dr. Brown denied the request. Query, how did Mrs. Flower know about the new hire, and terms of employment, before it was even approved?

At the next BOCC meeting, August 28, 2020, A motion was made to increase to all CCPHA employees' pay, for time they had spent on COVID-related matters, to circumvent Dr. Brown's decision. The increased pay is to come from Federal funds received by the County, although there is no provision for use of those funds for that purpose. Mr. Flower voted Aye. (See the video of the BOCC meeting at <https://custercounty.ompnetwork.org/embed/sessions/151657/custer-county-bocc-meeting-08-28-2020-at-hour-1.30>. He also voted for the increased pay while sitting on the Custer County Board of Health ("BOH") on September 17, 2020.

Since the COVID-19 pandemic struck Custer County, Commissioner Flower has continually sought his wife's opinion on matters relating to the health and safety of the citizens of Custer County. Mrs. Flower is not a doctor, RN, PA or NP. She was, formerly, a volunteer with Custer County EMT.

On September 29, 2020, a group of concerned citizens tendered a letter to Commissioner Bill Canda, sitting as the Chair of the BOH. A copy of that letter is attached hereto and made a part hereof.

Custer County has had a total of 21 positive cases of COVID-19. Only one person affected was hospitalized and that person has recovered. No one has died and the last reported case was more than six weeks ago. Many citizens have requested that the BOH apply to the State of Colorado for relaxation of the governor's mandates. Protect Our Neighbors means that communities that meet certain criteria have less stringent restrictions than under Stay at Home and Safer at Home. Dr. Clifford Brown, the Director of the Custer County Public Health Agency ("CCPHA"), has recommended that it be done. Mrs. Flower has consistently advised Commissioner Flower not to do so, in opposition to the will of the people, and contrary to the recommendation of the Director of CCPHA.

As a citizen of Custer County, I request the IEC investigate the facts of the matter and render its opinion/decision as to the obvious conflict of interest with Commissioner Flower and the citizens he represents.

ATTACHMENT 2 TO IEC COMPLAINT

Bill Canda, Chair, Custer County Board of Health

On behalf of a concerned group of citizens in Custer County, Colorado, we feel that there needs to be an immediate and permanent discontinuation of any further discussion on the creation of a Public Health Advisory Committee to the Custer County Board of Health ("BOH").

At the BOH meeting on August 28, Mary Ellen LaSage proposed that the Board of Commissioners (BOCC) step down from their positions on the BOH and that "real professionals" be appointed in their place. Mr. Printz asked if Ms. LaSage had a list of people that she would recommend to be on the BOH if the Commissioners decided to step down, followed by Mr. Flower asking that those names "not be revealed at this time." Then, at the BOH meeting on September 17, Mr. Printz made a motion to create "an advisory committee" to help the Commissioners, sitting as the BOH, to make recommendations to the BOH, based on the members of that committee's knowledge. His motion included the appointment of Mary Ellen LaSage as interim Chair. During public comment, questions arose as to why Ms. LaSage had been selected (not answered) and about how members of the committee would be chosen (to be discussed at the next BOH meeting).

Previously, there was an RN in the Public Health ("PH") Director position who was given all authority and power by Printz and Flower because they stated they did not know anything about healthcare. They stated that she was considered the "expert." Now, we have an actual doctor in that position, with a PH background, and Printz and Flower are ignoring (and disrespecting) his knowledge and wisdom by pretending that they need a full-blown committee to be their personal advisors. This doctor has a 28-page resume and is extremely qualified to give the BOH appropriate direction and guidance. Printz and Flower were elected by the constituents of Custer County. It is absurd that they want to abdicate their responsibilities by forming this "advisory committee." There should be no unelected committee advising on important decisions that could have a huge impact on our community.

It is a fact that Mr. Flower's wife, Cindi, is a County employee with the PH Department. Mrs. Flower is not an RN. In fact, she is merely an uncertified EMT. It was Mrs. Flower who originally brought Ms. LaSage to the table. How do Colorado's Sunshine Laws deal with "pillow talk?" How much influence does Mrs. Flower have? And, why does she have any? We are extremely concerned about this, seeming, impropriety. When did Printz and Flower decide that Ms. LaSage would be the interim chair? There was no such public discussion. It was presented as a "fait accompli." According to Commissioner Canda, he was not privy to any discussion about who should be appointed as interim chair. Something is rotten in the State of Denmark.

This "advisory committee" has no organizational structure, yet. It seems to us that, by appointing an interim chair, personally selected by Printz and Flower, the committee will be structured and governed as she sees fit, leaving an opportunity for a very stacked and biased committee. From what disciplines will the members be chosen? Would it include professionals in economics, mental health and other fields? Or will it be filled with medical health personnel who will advise that the BOH maintain the draconian restrictions that Printz and Flower propound? On another subject, it should be noted that a Federal District Court Judge, in Pennsylvania, has issued a decision that the restrictions placed by the Pennsylvania

Governor during the Covid-19 pandemic, while well-intentioned, are unconstitutional (County of Butler vs. Thomas W. Wolf), just as the County Attorney, Mr. Smith opined. While not binding on the State of Colorado, it is most certainly precedence should a similar action be filed here.

We will be filing a CORA (Colorado Open Records) request for cell phone records to be produced and reviewed from March 2020 to the present, as well as all email correspondence (personal and business) to be investigated to show the relationship between Printz and Flower, as well as the content of all email and texts to be reviewed to uncover whether there has been discussion of official business, in violation of the State's Sunshine Laws, and the results will be presented to the public.

We request that Tom Flower recuse himself from any discussion about his wife's position up to and including her pay (which he failed to do at the BOH meeting on September 17), as, at a minimum, it gives the appearance of impropriety and conflict of interest. When acting on such matters, is he representing the interests of his constituents, or his family?

Furthermore, as it has been noted that Mr. Flower is often seen texting during public meetings, we will be making a CORA request for all of his cell phone records, from March 2020, to the present, to determine with whom he is texting during all BOH and BOCC meetings. We will, then, make that information available to the public.

We continue to write to the BOH/Commissioners and it falls on deaf ears. This is our last and final request before calling on the local news media and State officials to stop the perceived collusion, bullying and violations of the Sunshine Laws.

Please acknowledge that this correspondence has been received and provide us with a timeline of action.

HAND DELIVERED TO MR. CANDA 9.29.20. Amended Signatures 10.15.20

Thank you,

Jim McMahon
Bob Hollingsworth
Sue Hollingsworth
Bill Parker
Larkin Watson Forman
Richard Forman
Ann Willson
Ann Barthrop
Jim Shapland
Paulette Shapland
Lisa Frank
Harald Frank
Glenn Littman
Mary Beth Brandow Littman
Peggi Collins
Steve Cocks
Galen Studebaker
Jolie Nichole
Brian P. Cline

Federico (Fred) Hernandez
Pam Hernandez
Jim Luman
Ann Luman
Christy Jenkins Morrell
Doug Bayer
Julie Oloman
Glenn Shock
Gwen Shock
George Gramlich
Yvonne Phillips
Danny Fyffe
Tilda Fyffe
Mark Fowler
Delores Winklestern
Phillip Winklestern
Susie Harrington
Eston Harrington
Fred Jobe
Deloris Jobe
Ashley Franklin
John Johnston
Alan Champion
Judy Champion
Ann Willette
Bruce Willette
Charley Ellison
Scott Rowley
Sabrina Todd Holmes
Marshall Holmes
Teri Munson
Monica Dean Kreckle
Jim Parkes
Leslie Parkes
Charles Cox
Bette Cox
Jake Shy
Alisha Shy
Judy Elkington
Bruce Elikington
Susanna Ferry
Linda Buddenbrock
James Barner
Beth Cartwright
Noel Burge
Alexander (Sandy) Harvey
Sally Harvey
Linda Anderson

Tom Mullis
Charly Potts
John Potts
Rick Ashcroft
Marc Hewston
Leroy Wolfe
Ole Babcock
Mike Kienbusch
Kit Shy
Maria Duran-Shy
Jon Walestad
Elizabeth Walestad
Mary Seifert
Twila Geroux
Robert Patnode
David Nequette
Diane Williams
Kenneth Humphreys
Becky Humphreys
Hubert LeCuyer
Jason Partida
Carolee Rowley
Connor Rowley
Susanna Ferry
91. Ian Ferry

