

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 20-76

ORDER OF DISMISSAL

IN THE MATTER OF: CLIFFORD BROWN, Respondent

This matter comes before the Independent Ethics Commission (“Commission”) on a complaint filed by Complainant Jordan Hedberg (“Complainant”) against Clifford Brown (“Respondent”), the Custer County Public Health Director. The Complaint generally alleged that Respondent forged or presented false academic credentials, specifically, a Master’s Degree in Public Health. Because a Master’s Degree in Public Health is required for a non-physician to serve as a county public health director, *see* State Board of Health Rule 1.2(3), 6 CCR 1014-6, Complainant alleges that Respondent both obtained and continues to hold his position based on forged academic records.

The Commission found the complaint non-frivolous and proceeded with an investigation. After issuing the Report of Investigation and Notice of Issues for Hearing, the Commission asked the parties to brief the issue of whether the potential violations set forth in the Notice of Issues for Hearing predated Respondent’s public employment and thus fell outside the Commission’s jurisdiction. *See People in Interest of C.N.*, 431 P.3d 1219, 1223 (Colo. App. 2018) (subject matter jurisdiction is not waivable and may be raised at any time). On November 16, 2021, the Commission held a hearing on the jurisdictional issue. For the reasons set forth below, the Commission finds that it does not have jurisdiction over the allegations in the complaint that Respondent forged his qualifications for Public Health Director of Custer County. The remaining allegations, if true, do not fall within a statutory standard of ethical conduct over which the IEC has jurisdiction.

I. Findings of Fact

1. Respondent was a county employee beginning on August 17, 2020, when he began his duties as the Custer County public health director.¹

2. Prior to August 17, 2020, Respondent was not a covered individual subject to the Commission’s jurisdiction.

¹ Complainant alleged that Respondent was hired in July 2020.

3. Respondent was recruited by Custer County to serve as the County's public health director.

4. As part of his recruitment for the public health director position, Respondent submitted a CV, along with photocopies of a Master's in Public Health diploma and transcripts from Dartley University.

5. Complainant alleged that Dartley University was an "illegal online diploma mill" from which one could obtain false credentials. Respondent claimed that Dartley University was a legitimate institution of higher education, but was simply unaccredited.

6. Complainant alleged that Respondent committed forgery when he allegedly: (1) applied for the public health director position; (2) presented forged credentials to the Custer County Board of Health at a September 30, 2020 meeting; and (3) continued to hold his position based on forged credentials.

II. Conclusions of Law

7. The Commission has jurisdiction over "government employee[s]", including employees of local government, pursuant to Colo. Const. art. XXIX § 2(1).

8. The potential violations listed in the Notice of Issues for Hearing, based on the facts alleged in the complaint, were §§ 18-5-104 (second degree forgery) and 18-5-104.5 (use of forged academic record), C.R.S. Violation of those statutes could constitute a violation of the public trust if such actions allowed Respondent to improperly benefit financially from his public employment, and thus may constitute "other standards of conduct" within the Commission's jurisdiction pursuant to § 24-18-103, C.R.S., and Colo. Const. art. XXIX, § 5.² *Gessler v. Smith*, 419 P.3d 964, 967 (Colo. 2018).

9. Section 18-5-104 provides, "a person commits second degree forgery if, with intent to defraud, such person falsely makes, completes, alters, or utters a written instrument of a kind not described in section 18-5-102 or 18-5-104.5."

10. Section 18-5-104.5 provides, "A person commits use of a forged academic record if, with intent to seek employment ... such person falsely makes, completes, alters, or utters a written instrument which is or purports to be, or is

² The IEC does not impose criminal penalties if it finds an ethical violation under a criminal statute. The penalties the IEC is authorized to impose by Article XXIX are civil in nature and consist only of monetary fines. Colo. Const. Art. XXIX, § 6.

calculated to become or to represent if completed, a bona fide academic record of an institution of secondary or higher education.”

11. Section 18-5-104.5 further defines “academic record” to mean “a transcript, diploma, grade report, or similar document of an institution of secondary or higher education.”

12. Respondent was not a government employee when he sought the Public Health Director position. Section 18-5-104.5 applies to actions taken “with intent to seek employment.” Therefore, Complainant’s first claim, that Respondent committed forgery when he applied for the position of Custer County Public Health Director, is outside the IEC’s jurisdiction.

13. Complainant’s remaining allegations do not fall within a statutory standard of conduct over which the Commission has jurisdiction. Specifically, the second degree forgery statute, Section 18-5-104, excludes instruments “of a kind” described in 18-5-104.5—that is, academic records. *See Hoggard v. People*, 465 P.3d 34, 44 (Colo. 2020) (“to convict a person of second degree forgery, the prosecution must affirmatively prove that the forged document is ‘of a kind *not* described in section ... 18-5-104.5” (emphasis in original)) (Marquez, J., concurring in part and dissenting in part).

14. Finally, Complainant’s last claim—that Respondent continues to violate the public trust by holding a position that he is not qualified for—is not a cognizable ethical violation under the applicable law. While § 24-18-103 speaks generally about departures from one’s fiduciary duty as a public employee constituting a breach of the public trust, it does not clearly proscribe the alleged conduct here. Therefore, the Commission declines to apply it as a standalone standard of conduct.³ *See People v. Hickman*, 988 P.2d 628, 643 (Colo. 1999).

The Complaint is therefore DISMISSED.

THE INDEPENDENT ETHICS COMMISSION

Selina Baschiera, *Vice-Chair*

Annie Kao, *Commissioner*

Sarah Mercer, *Commissioner*

Cole Wist, *Commissioner*

Dated: December 1, 2021

³ To the extent Complainant alleges that Custer County did not comply with state regulations when it submitted materials regarding Respondent’s qualifications to the Colorado Department of Health and Environment, the Commission does not have jurisdiction over Custer County.

Commissioner Elizabeth Espinosa Krupa did not participate in this decision.