

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 21-25

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN THE MATTER OF: RICK PALACIO

This matter comes before the Independent Ethics Commission (“Commission” or “IEC”) on a complaint filed by Defend Colorado (“Complainant”) against Rick Palacio, a former employee of the State of Colorado with the Governor’s Office. Complainant alleged various ethical violations regarding Mr. Palacio’s engagement as a consultant with the Governor’s Office immediately following the end of Mr. Palacio’s time as an employee. The Commission provided notice to the parties that the allegations would be evaluated under section 5 of the Colorado Constitution, Article XXIX to determine if sections 24-18-108(2)(d) and 24-18-201, C.R.S., had been violated.

On April 16, 2024, the Commission held an evidentiary hearing and considered legal arguments and evidence presented by the parties. Neither party presented evidentiary testimony at the April 16, 2024 hearing, relying instead on a list of jointly stipulated facts previously submitted to the Commission. On August 20 and November 19, 2024, the Commission held meetings for purposes of deliberating and receiving legal advice. For the reasons set forth below, the Commission has determined that:

1. Mr. Palacio did not violate section 24-18-108(2)(d) because he did not perform any official act that resulted in an economic benefit to him;
2. Mr. Palacio violated section 24-18-201 by contracting with the Governor’s Office involving matters with which he was directly involved during his employment within six months of leaving employment;
3. No evidence was presented demonstrating that Mr. Palacio’s contract caused harm to the State of Colorado or otherwise violated the public trust; and
4. No monetary penalty is warranted pursuant to Colo. Const. art. XXIX § 6.

I. FINDINGS OF FACT

5. On August 1, 2020, the Governor's chief of staff, Lisa Kaufmann, began maternity leave, which created a temporary vacancy in the position of chief of staff.
6. Mr. Palacio was hired to fill the position of chief of staff on an interim basis while Ms. Kaufmann was on maternity leave.
7. Mr. Palacio was paid on a biweekly basis, received benefits, and accrued leave time.
8. Mr. Palacio was not a classified state employee in this position and, therefore, the schedule of leave accrual that applies to classified state employees did not apply to him.
9. During his time as interim chief of staff, Mr. Palacio worked on issues related to the state's response to the pandemic.
10. Ms. Kaufmann returned to work in the Governor's Office on Monday, November 2, 2020, and she resumed her duties as chief of staff on November 9, 2020.
11. Mr. Palacio continued working in the Governor's Office through November 30, 2020, to assist Ms. Kaufmann in the transition back to chief of staff.
12. Mr. Palacio was asked to continue to work with the Governor's Office on pandemic response-related issues.
13. Ms. Kaufmann decided it was appropriate to retain Mr. Palacio's services and expertise as an outside consultant.
14. Ms. Kaufmann subsequently retained Mr. Palacio's services and expertise by authorizing a consulting services agreement that contracted for Mr. Palacio's services.
15. Ms. Kaufmann signed the purchase order for Mr. Palacio's consulting services agreement.
16. Mr. Palacio's last day as a state employee was November 30, 2020. This exit date is reflected in his state personnel profile.
17. Mr. Palacio's consulting engagement began on December 1, 2020, which was the day after his employment with the Governor's Office ended on November 30, 2020.
18. Monday, November 30, 2020, was in the middle of the biweekly pay period.
19. Sarah Bolt is a human resources coordinator in the Governor's Office. She was responsible for processing Mr. Palacio's exit paperwork and paycheck, which are administrative tasks in which Mr. Palacio was not involved.

20. The last day of a pay period is the default setting in the payroll system.
21. The last day of the pay period was December 4, 2020.
22. Ms. Bolt acknowledges that she mistakenly did not override the default setting that selected December 4, 2020, as the end of the pay period.
23. Mr. Palacio's final paycheck included salary covering two pay periods (one full pay period and a second partial pay period), a payout of accrued and unused leave, and the mistaken payment for December 1 through 4.
24. Upon learning of the overpayment mistake, the Governor's Office requested reimbursement and Mr. Palacio immediately reimbursed the state for the full amount of the overpayment.
25. The Governor's Office's position is that:
 - a. neither the Purchase Order, nor Mr. Palacio's work as a consultant under the Purchase Order, created a conflict of interest or a potential for unfair advantage in Mr. Palacio's favor;
 - b. Mr. Palacio remained on the "same side of the table" as his former employer, working with the Governor's Office on issues related to the COVID pandemic;
 - c. Mr. Palacio's contractual role as set out in the Purchase Order did not compromise the interests of the Governor's Office in any way; and,
 - d. Mr. Palacio's service under the Purchase Order was intended by the office to benefit the Governor's Office and the people of Colorado.

II. CONCLUSIONS OF LAW

a. Jurisdiction

26. Mr. Palacio was an employee and subsequent independent contractor of the Governor's Office and was therefore a "government employee" within the meaning of section 2 of Article XXIX of the Colorado Constitution. The Commission has jurisdiction over Mr. Palacio pursuant to section 5(1) of Article XXIX.
27. Mr. Palacio was subject to the Commission's jurisdiction at the time of the events in question.

28. As set forth in the IEC’s Order on February 26, 2024, the Governor’s Office is an “executive ... office” under section 24-18-102(9), C.R.S. Accordingly, at the time of the allegations, Mr. Palacio was an “employee” as defined by section 24-18-102(3), C.R.S., and subject to the standards of conduct set forth in sections 24-18-108(2)(d) and 24-18-201, C.R.S. *See* Colo. Const. art. XXIX § 5(1).
29. The Commission 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,” including those set forth in parts 1 and 2 of article 18. *See Gessler v. Smith*, 419 P.3d 964, 972, 974-75 (Colo. 2018).

b. Section 24-18-108(2)(d), C.R.S.

30. Section 24-18-108(2)(d), C.R.S., provides that a state employee shall not perform any 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.
31. Mr. Palacio was a state employee and had a substantial financial interest in the consulting services agreement the Governor’s Office executed with him.
32. Both the consulting services agreement and the purchase order for the agreement were authorized or signed by Lisa Kaufmann, the chief of staff.
33. No facts were admitted as evidence during the hearing that would establish any official actions taken by Mr. Palacio while he was a state employee to benefit himself through the consulting services agreement.
34. The Commission finds that Mr. Palacio did not violate section 24-18-108(2)(d).

c. Section 24-18-201(1), C.R.S.

35. Section 24-18-201(1), C.R.S., as relevant here, states that a “former employee may not, within six months following the termination of his employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment.”
36. In interpreting and applying section 24-18-201(1), the Commission must “discern and effectuate the General Assembly’s intent ... [by] apply[ing] words and phrases in accordance with their plain and ordinary meanings” *Miller v. Crested Butte, LLC*, 2024

CO 30, ¶23 (internal citations omitted). Statutes must also be interpreted by looking “to the entire statutory scheme to give consistent, harmonious, and sensible effect to all of its parts ... [and to] avoid constructions that would render any words or phrases superfluous or that would lead to illogical or absurd results.” *Id.* When “construing a statute, we must respect the General Assembly’s choice of language ... [and] not add words to a statute or subtract words from it.” *Id.*

37. The plain language of section 24-18-201(1), C.R.S., mandates a blanket six-month post-employment prohibition on former state employees contracting with or being employed by an entity that contracts with the State if the contract or employment involves “matters which he was directly involved during his employment.” Thus, a former employee violates section 24-18-201(1) if they (1) contract with the state within six months of terminating employment with the government and (2) the contracted for work involves matters they were directly involved with while employed by the government.
38. To the extent prior opinions or letter rulings of the Commission appear to have required a breach of the public trust through an adverse or potentially adverse relationship to find a *violation* of section 24-18-201(1), C.R.S., such an approach is inconsistent with the plain meaning of the statute. As discussed in more detail below, whether there was an adverse relationship, including whether the parties to a contract that violates the plain language of the statute are not “on the same side of the table,” is relevant to the question of whether there has been a violation of *the public trust* such that penalties are required. That analysis, however, should only come after the plain language of the statute is applied to determine whether the former employee’s contract violates *the six-month prohibition*.¹
39. The legislature provided five separate exclusions from the term “contract” covered by the six-month prohibition. §§ 24-18-201(1)(b)(I) – (V), C.R.S. These exclusions include,

¹ The majority of the Commission’s past decisions involving section 24-18-201(1), C.R.S., have turned on whether former employees’ new positions dealt with matters with which they were directly involved in while employed by the government. *See, e.g.*, Letter Ruling 17-02 (new role was not for matters requestor was directly involved in while employed by government); Letter Ruling 14-02 (requestor “was directly involved in the matters which will be impacted by the employment he seeks.”). Some, however, have been less clear in separating the analysis between whether the statute was violated and whether that violation was a breach of the public trust. *See* IEC Complaints Nos. 15-31, -32, -33, and -34, *Giehl v. Starr*, ¶¶11-12 (focusing on the ethical implications of a county attorney being rehired as for the same role after leaving the county for private practice). A scenario where a former employee’s post-government employment creates a violation of the public trust within six-months of leaving government employment would necessarily violate section 24-18-201(1), C.R.S., but the statute’s plain language does not require that heightened showing to prove a mere violation.

among others, contracts awarded to the lowest responsible bidder based on competitive bidding procedures. § 24-18-201(b)(I), C.R.S.

40. Here, it is undisputed that Mr. Palacio worked on matters related to the State's pandemic response while employed with the Governor's Office.
41. It is also undisputed that, the day after his employment with the Governor's Office ended, Mr. Palacio entered into a consulting contract with the State to continue working with the Governor's Office on pandemic response-related issues.
42. Mr. Palacio contracted with the Governor's Office to perform work with which he was directly involved while employed there within six months of terminating that employment.
43. No evidence was admitted or offered at the hearing that demonstrated that Mr. Palacio's consulting contract was awarded through a competitive bid process or that any of the other exclusions of section 24-18-201(1)(b), C.R.S., applied.
44. Accordingly, under the plain meaning of section 24-18-201(1), C.R.S., the Commission finds that Mr. Palacio violated the statute.

d. Penalty

45. The Commission may assess penalties when a "government employee ... breaches the public trust for private gain" Colo. Const. art. XXIX § 6.
46. Violations of section 24-18-201, C.R.S., are not automatically a breach of the public trust. Indeed, in a past opinion, the Commission has stated that the "statute recognizes the violation of the public trust when a former government employee acts in a manner that is adverse or potentially adverse to the interest of the government agency." IEC Complaints Nos. 15-31, -32, -33, and -34, *Giehl v. Starr*, ¶ 11.
47. Requiring an adverse interest, among other factors, before finding a breach of the public trust is consistent with other statutes. Section 24-18-104(1)(a), C.R.S., specifies that it is a breach of an employee's fiduciary duty and the public trust if a person subject to the statute is found "beyond reasonable doubt" to have used "confidential information acquired in the course of official duties ... to further substantially his personal financial interest." Similarly, Article XXIX, section 1(d) of the Colorado Constitution states that an "effort to realize personal financial gain through public office other than compensation provided by law is a violation of [the public] trust." Thus, an employee or former employee may violate the public trust if they have misused confidential information obtained while employed with the state to enrich themselves to the state's detriment.

48. Here, no facts were admitted into evidence that would establish that Mr. Palacio violated the public trust. To the contrary, the parties stipulated that the Governor’s Office has taken the position that 1) Mr. Palacio’s consulting contract did not create a conflict of interest or a potential for unfair advantage in Mr. Palacio’s favor; 2) Mr. Palacio remained on the “same side of the table” as his former employer; 3) Mr. Palacio’s contractual role as set out in the Purchase Order did not compromise the interests of the Governor’s Office in any way; and 4) Mr. Palacio’s service under the Purchase Order was intended by the office to benefit the Governor’s Office and the people of Colorado.

49. The Complainant failed to submit any evidence at the hearing to rebut the Respondent and the Governor's Office’s evidence that there had been no violation of the public trust.

THEREFORE, the Commission finds by a preponderance of the evidence that Mr. Palacio violated section 24-18-201(1), C.R.S., but that no penalty is warranted pursuant to section 6 of Article XXIX.

The Independent Ethics Commission

Daniel Wolf, *Vice-Chair*
Elizabeth Espinosa Krupa, *Commissioner*
Lora Thomas, *Commissioner*
Cole Wist, *Commissioner*

Sarah Mercer, *Chair*, Recused

Dated: December 6, 2024