

Independent Ethics Commission – Formal Complaint Form

Before the Independent Ethics Commission
of the State of Colorado

For Commission Use Only

Received date: 01-Nov-2022

Case. No.: 22-34

The Complainant is: Matthew H. Roane

(name)

Mailing Address: P.O. Box 957

Pagosa Springs, CO 81147

Daytime telephone number: (970) 507-7117

Email address: mhroane@gmail.com

The Respondent is: Archuleta County Commissioner Warren Brown

(name)

Mailing Address: Archuleta County Board of County Commissioners

P.O. Box 1507

Pagosa Springs, CO 81147

Daytime telephone number: (970) 264-8304

Email address: warren.brown@archuletacounty.org

When did the alleged violation occur: August 28, 2022

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.

On October 27, 2022, the Pagosa Springs Sun reported that Archuleta County Commissioner Warren Brown has been accepting reimbursements for mileage driven in his personal car commuting between his home and regular office. The Sun reported that payments began accruing the week of August 28, 2022. (Article attached.)

C.R.S. sec. 30-2-103 allows county commissioners to accept reimbursements for mileage incurred "when engaged in business on behalf of the county" as set by resolution of the county commissioners. In the same Sun article, the County's Administrator explained that the Commissioner's supposed authorizing resolution

Description of acts or things complained of (continued):

was Resolution No. 2016-22, updating Archuleta County's "Personnel Policy and Procedures Handbook for County Employees" (the Handbook). (A copy of the Resolution is attached.) While the Handbook does authorize employees to get reimbursed for mileage incurred while driving their personal vehicles, the vehicle must be in use "for business". (Section 702, p.83.) The Handbook also explains, "The personal use of a county vehicle includes commuting to and from work" (Sec. 604, p.70.) (Cited portions of the Handbook are attached and highlighted for emphasis.)

The foregoing circumstances beg several questions:

1. Is the Commissioner an "employee" whose conduct is governed by the Handbook?

2a. If not, where is the resolution authorizing the Commissioner's reimbursement for mileage as required by C.R.S. sec. 30-2-103?

2b. If so, does the Commissioner's commute to/from work constitute being "engaged in business on behalf of the county" under C.R.S. sec. 30-2-103, and conducting "business" as required by the Handbook?

3. If no to either question in 2b, is the Commissioner's acceptance of reimbursement for mileage incurred commuting to his office a violation of Colorado's Gift Ban as set forth in Colo. Const. Article XXIX, Section 3?

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: _____

Attorney (if applicable): _____

Dated at Pagosa Springs (City), Colorado, this 1st day of November, 2022.

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.

County begins paying commissioners mileage

By Josh Pike
Staff Writer

Documents obtained by The SUN through a Colorado Open Records Act request indicate that some of the Archuleta County commissioners are receiving reimbursements for their mileage expenses, including to and from their homes, under a new county policy.

In an interview, County Manager Derek Woodman explained that Archuleta County learned that other counties "across the state are reimbursing their commissioners for their actual expenses."

Woodman cited the practice is supported by Colorado Revised Statute 30-2-102, which states, "All actual and necessary expenses of an elected officer incurred while engaged in business on behalf of the county may be allowed by the board of county commissioners and paid out of the county treasury."

He explained that the mileage that can be reimbursed includes travel to and from their homes and any travel for county commissioners' business, such as attending meetings in Durango, although mileage reimbursements cannot be claimed for personal travel, such as doing errands or going to lunch.

Woodman stated that the reimbursements could be claimed by other county elected officials as well, but added, "to the best of my knowledge, none of them knew about this and none of them made the request."

When asked about whether the other elected officials have been informed about this program, Woodman said, "I work for the commissioners; I don't work for the other elected officials."

In response to a question about if the mileage reimbursements are being taxed, Woodman stated, "It's the IRS rate that they're being allocated."

He explained that research on the program began in July and the program started for the week of Aug. 28, with reimbursements being given at two-week intervals.

Woodman also explained that the commissioners adopted this policy as a part of adopting Resolution 2016-22, "Adopting An Updated Personnel Policy And Procedures Handbook For County Employees," which he noted has been frequently amended by vote of the commissioners since 2016.

In an interview, Commissioner Ronnie Maez indicated that he has declined to participate in the reimbursement program.

The reimbursement checks and mileage records obtained by The SUN indicate that Commissioner Alvin Schaaf received \$420 dollars of reimbursements during this period at a rate of 62.5 cents per mile for 672 miles of travel.

The mileage charts indicate that the distance to Schaaf's home is 24

Documents courtesy
Archuleta County

Mileage sheets for Archuleta County Commissioner Alvin Schaaf and Commissioner Warren Brown include distances to the commissioners' homes from their offices, recorded mileage and rate, approval dates, and the initials of the person responsible for approval, County Manager Derek Woodman.

Warren Brown		6.4 Miles Home to Office						
December		Sun	Mon	Tue	Wed	Thurs	Fri	Sat
Date	18	19	20	21	22	23	24	
Mileage			12.6	20.9	12.6	32.2	18.2	96.5
Date	25	26	27	28	29	30	31	
Mileage			24	26.4	19.2	15.1	12.6	121.3
IRS Rates 7/1 through 12/31/2022 is 62.5 Cents Per Mile								
Turn in Monday, January 2								
Fund: 100		Approved for Payment						
Vendor: 4110.5804		Date: 11/30/2022						
Inv. #		Approval: [Signature]						
1) 4110.5804		\$ 136.13						
2)		\$						
3)		\$						
4)		\$						
Total Miles		217.8						
Total Reimbursement		\$ 136.13						

Alvin Schaaf		24 Miles Home to Office						
September		Sun	Mon	Tue	Wed	Thurs	Fri	Sat
Date	25	26	27	28	29	30	1	
Mileage			48	48		48		144
Date	2	3	4	5	6	7	8	
Mileage			48	48				96
IRS Rates 7/1 through 12/31/2022 is 62.5 Cents Per Mile								
Turn in Monday, October 10th								
Fund: 100		Approved for Payment						
Vendor: 4110.5804		Date: 10/12/2022						
Inv. #		Approval: [Signature]						
1) 4110.5804		\$ 150.00						
2)		\$						
3)		\$						
4)		\$						
Total Miles		240						
Total Reimbursement		\$ 150.00						

miles from his office and he traveled 48 miles daily two to three days a week in performance of his duties as commissioner.

In an interview, Schaaf indicated that he accepted the reimbursements because he is using his personal vehicle for commissioner activities, which include "driving back and forth to work and going to other meetings," and because such reimbursements are allowed under state statute.

He explained that he also sometimes drives his brand inspector vehicle and that he does not accept reimbursements for travel with that vehicle.

The mileage documentation also indicates that Commissioner Warren Brown was reimbursed \$318.14 dollars for mileage during the period for traveling 509 miles.

The charts indicate that Brown's home is 6.4 miles away from his office and that he traveled an average of five days a week with distances ranging from 12.6 miles to 32.2 miles.

In an interview, Brown explained that he took the reimbursements "because that is what is allowable by statute. And I'm not sure it is appropriate that we have any employee of the county supplementing the county's budget. ... I have a lot of meetings. I have had breakfast, lunch, dinner, coffee with many constituents. I've never turned

those expenses in, ever, and they're pretty considerable. Nor have I ever allowed anyone to buy me anything along that line because for me it's an integrity issue. When it was brought to my attention that this is an expense that is compensable and it is part of the job, why would I not?"

Brown explained that he records travel expenses for county business such as attending meetings and events.

Brown also commented on the differences between the commissioners on accepting reimbursements, saying, "I'm not a commissioner that shows up twice a week for a couple hours a day. I have made the commitment that this is going to be my full-time employment and I have made that commitment, and I'm here and I'm working many hours a week every single week. And if I'm not, of course, why would I ask for mileage reimbursement? Because that would be unethical. But the fact of the matter is, I would guess, I don't know this ... that I am working more hours than any commissioner has worked in the recent history. When I'm asked to be at a community event, I take that as a very serious part of this job. And it seems that I make myself more available than some others. And it could be because they have other jobs that won't let them or whatever — and I'm not throwing anyone under the bus — all I'm saying is that I made

this commitment."

He emphasized that he feels that attending public events is important and questioned whether he should pay for driving his own vehicle to such events when he is there representing the county.

"I don't think I should. I think that is a valid and genuine expense," he said.

He also emphasized his dedication to ethics and stated that the mileage reimbursements are not outside the norm for commissioners in the state.

He added, "It may be something that is a little outside the norm here, but I have to tell you, since I've been in office, I've done a lot of things that have been outside of the norm because that's what needs to be done because we've been getting exactly what we've always been getting and it just hasn't worked. And, so, more effort, more time, more mileage."

Brown also stated that all the mileage he is charging for is with his personal vehicle, adding that any alternative to this would be unethical.

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This newspaper will not knowingly accept any advertising for real estate which is in violation of the law. Our readers are hereby informed that all dwellings advertised in this newspaper are available on an equal opportunity basis. To complain of discrimination call HUD toll-free at 1-800-669-9777. The toll-free number for the hearing impaired is 1-800-927-9275.



SUN photo/Josh Pike
A dump truck sits after hitting a UPS truck, two driving vehicles, a parked vehicle and a building downtown shortly before 2 p.m. Friday afternoon, Oct. 21. According to Brooks Brown, assistant Pagosa Springs police chief, the driver reported trying to downshift around 14th Street while eastbound on U.S. 160, but that they were unable to get the truck into another gear and the brakes were not working. The incident is under investigation.

Child

■ Continued from A9

like 4-H, Fellowship of Christian Athletes and Valor School are filling boxes.

All you have to do is pick a girl or boy ages 2-4, 5-9 or 10-14 and go shopping with your box in the cart. Fill it with basic items like a toothbrush, bar of soap, washcloth, crayons, a pencil and a coloring book or index cards. A wow toy like a soccer ball and pump, doll or a stuffed animal, car or bag of marbles will change a life forever.

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Help our little mountain town touch lives of needy children around the world this Christmas and reach our goal of 2,500 shoeboxes. Our collection week is Nov. 14-21. The drop-off loca-

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- Nov. 14, 1-3 p.m.
- Nov. 15, 1-3 p.m.
- Nov. 16, 1-3 p.m.
- Nov. 17, 1-3 p.m.
- Nov. 18, 1-3 p.m.
- Nov. 19, 1-3 p.m.
- Nov. 20, 1-3 p.m.
- Nov. 21, 8-10 a.m.

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RESOLUTION 2016-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, COLORADO, ADOPTING AN UPDATED PERSONNEL POLICY AND PROCEDURES HANDBOOK FOR COUNTY EMPLOYEES

WHEREAS, pursuant to C.R.S. §30-11-107(1)(e), the Board of County Commissioners (“Board”) has the authority to represent the County and the management of its business and concerns in all cases where no other provisions are made by law, when deemed by the Board to be the best interest of the County; and,

WHEREAS, the Archuleta County Personnel Policy Manual dated May 2012 was adopted by the Board on May 15, 2012; and,

WHEREAS, it has been deemed necessary to update the current Personnel Policy Manual; and,

WHEREAS, employment conditions and Colorado state requirements have necessitated that the said policy be updated to meet present and future conditions and requirements; and

WHEREAS, no County resources will be utilized in the defense of any County employee or official who violate Personnel Policy and Procedures Handbook; and

WHEREAS, the policy will be binding upon all future employees and elected officials until modified or amended by further agreement and resolution, subject to the laws of the State of Colorado; and

WHEREAS, all previous personnel policies and handbook shall be considered repealed.

NOW, THEREFORE, BE IT RESOLVED that the Archuleta County Personnel Policy and Procedures Handbook dated March 2016 attached hereto as Exhibit A, is hereby adopted as the policy for personnel issues for the County of Archuleta and its employees effective immediately.

APPROVED AND ADOPTED this 1st day March, 2016 in Pagosa Springs, Archuleta County, Colorado.

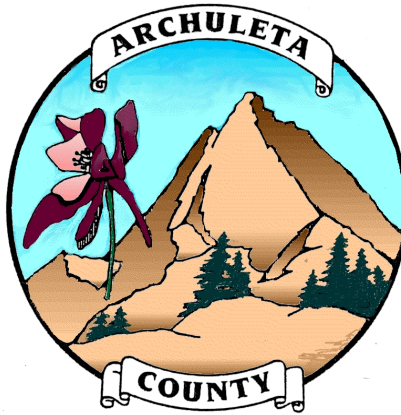
**BOARD OF COUNTY COMMISSIONERS
ARCHULETA COUNTY, COLORADO**

Michael Whiting, Chairman

ATTEST

June Madrid, Clerk and Recorder

ARCHULETA COUNTY COLORADO



Personnel Policy and Procedures Handbook

March 2016

This employee Handbook is not a contract of employment or an offer for a contract of employment. Nothing in this handbook modifies your at will status. It is not a promise of employment for any length of time or under any particular conditions. The Handbook may be modified or withdrawn at any time, with or without prior notice. No employee or agent of the County other than the County Administrator and/or Board of County Commissioner's has the authority to promise employment for any length of time or under any particular conditions, and any such offer or promise must be in writing and signed by the County Administrator pursuant to Board of County Commissioner's authorization.

603 - Continuing Education – The County encourages continuing education as part of an employee's personal growth and development. An employee may be eligible for reimbursement of actual expenses for attending or taking college level courses from an accredited college or university (not to exceed \$1,000 in any calendar year). The college course must be job-related and will be determined by the employee's Department Head or Elected Official (as defined), or be required for a job-related degree as determined by the employee's Department Head or Elected Official (as defined). To be considered for reimbursement and prior to registering for any course the employee must have written approval from their Department Head or Elected Official (as defined). Employees are encouraged to coordinate with their Department Head or Elected Official (as defined) during budget preparation process, prior to the start of a new calendar year.

604 - Vehicles, Equipment, and Facilities: Archuleta County issues vehicles and equipment for its employees' use in the delivery of the services provided by the County.

The County classifies employees into three categories according to the driving requirements of their jobs:

Non-driving: These employees never need to drive on County business.

Marginal driving: These employees occasionally or frequently need to drive on County business.

Essential driving: These employees drive on County business as an essential part of their job function. This category includes CDL holders in safety-sensitive jobs such as Equipment Operators, many Departments of Public Safety personnel, Department of Transportation personnel, and many emergency personnel.

The Human Resources Administrator in conjunction with the department head will determine which employees/jobs fall into which category, and review the determination annually. The Human Resources Administrator will manage the Fleet & Risk Management County Vehicle Use Policies and Procedures. All employees who drive for Archuleta County, no matter the frequency of the driving, must adhere to the Fleet & Risk Management County Vehicle Use Policy and Procedures outlined in this document and any additional related documents issued.

Every employee who drives a vehicle on County business will possess a valid Colorado driver's license appropriate to the vehicle driven at all times. No employee will drive a vehicle on County business if that employee's driving privileges are under suspension, have been revoked, or their license has expired. Employees classified in the Marginal and Essential driving positions will inform their supervisor within twenty-four (24) hours or the next working day of any such suspension, revocation or license expiration. Failure to do so may subject the employee to disciplinary action up to and including termination.

The Human Resource Department may perform annual driver's license record checks on all County employees in Marginal and Essential driving positions. Any employee in an Essential driving position who has a driver's license suspended, revoked, or expired may be immediately terminated as an employee of the County. Any employee in a Marginal driving position who has a driver's license suspended, revoked, or expired will be prohibited from driving on County related business and may be subject to other disciplinary action.

If that employee can no longer perform the essential functions to his/her position as a result of the prohibition, that employee's employment with the County may be terminated, unless the employee is qualified to transfer into an available non-driving position.

Any employee convicted of an alcohol or illegal drug related offense while driving a County vehicle, or while driving any vehicle on County business, will be immediately terminated as an employee of the County.

For Marginal driving positions, an employee's driving record is unacceptable if it shows the following:

- Twelve (12) points or more of violations within the last three (3) years, or
- One alcohol or drug related driving conviction within the last three (3) years.

For Essential driving positions, an employee's driving record is unacceptable if it shows the following:

- Twelve (12) points or more of violations within the last two (2) years, or
- One alcohol or drug related driving conviction within the last year.

If an employee's motor vehicle records check shows either of the above, the record will be reviewed by the employee's immediate supervisor and the County Administrator. The County Administrator and the employees Department Head or Elected Official (as defined) will determine what action will be taken, up to and including termination of employment.

Employees agree that while driving on County business, they will operate vehicles in a safe, prudent manner and drive defensively to minimize risk to themselves and those around them. All traffic laws and motor vehicle laws will be obeyed at all times. All vehicle occupants shall wear seat belts at all times, except for the Senior/disabled bus and Mountain Express public transportation passengers for whom seat belt usage is optional.

All accidents involving any County vehicle or County equipment shall be reported immediately and the proper reports will be submitted as soon as possible to the Department Head or Elected Official (as defined) who will then forward to the Human Resources department. Failure to comply with this requirement may result in disciplinary action up to and including termination of employment.

Drivers and other employees directly involved in any accident involving any County vehicle or County equipment that results in bodily injury to any accident participant, citation issuance to a County employee, or if the vehicle is disabled to the extent that it cannot be driven from the scene, shall report to supervisor and law enforcement within two (2) hours of the accident. The emergency room administrative personnel are to be directed to send the results of the drug and alcohol test as soon as possible to the Human Resources Department for appropriate action.

Employees who fail to comply with this requirement may be subject to disciplinary actions up to and including termination of employment. All test results related to drug or alcohol screening will remain confidential, available on a "need-to-know" basis only, to the Human Resources Administrator, Department Head, Elected Official (as defined), County Attorney, and the affected employees. Employees involved in such accidents are not to drive a County vehicle or their own vehicle for County business for the remainder of the work day.

An accident involving a County vehicle or County equipment that is determined to be the fault of the employee through carelessness or neglect may result in disciplinary actions up to and including immediate termination.

Employees shall maintain County vehicles both inside and out in a neat, clean, and orderly manner. County issued gas cards and car wash cards shall only be used for County owned vehicles.

Employees shall report any defects or maintenance problems immediately to their immediate supervisors who shall then notify the Department Head or Elected Official (as defined) and the Fleet Manager.

Persons who are not employees of the County may be transported in a County vehicle if such transport is for County business when these people are performing a function or providing a service that is considered to be a benefit to Archuleta County.

Other governmental employees may ride in a County vehicle if they are involved in County business, and the vehicle is driven by a County employee.

People who are not County employees, approved volunteers performing County business, County business passengers (such as, public transportation passengers, inmates, etc.), people directly performing County business mentioned above, and the other governmental employees mentioned above, are prohibited from riding in County-owned vehicles at any time unless otherwise approved by the Department Head or Elected Official (as defined). This includes relatives and friends of the County employee, unless the relative is accompanying the employee to an out-of-county training or meeting site. In addition, pets and hitchhikers are prohibited from riding in County-owned vehicles. However, pets in proper carriers and service pets are permitted in County transportation buses.

An annual review of drivers' license reports will be done to update qualifying information. Failure to annually satisfy all qualifications will result in immediate elimination as a volunteer driver for the County.

Smoking and tobacco use is prohibited in County vehicles at all times.

Vehicle services shall be obtained according to the Fleet Management schedule.

Use of County vehicles is limited to official County business. County vehicles shall not be used for commuting, except in instances of "on-call" employees as approved by the County Administrator. Assigned County vehicles are subject to annual review by the appropriate department head and final determination by the County Administrator.

County vehicles shall not be used for personal business unless specifically pre-approved for such in writing by the County Administrator or Elected Official (as defined). **The personal use of a County vehicle includes commuting to and from work,** except for instances of "on-call" employees mentioned above, and are considered by the IRS to be a non-cash employee benefit and subject to both income and employment/payroll taxes. In those cases in which personal business use is approved, the Finance Director will calculate the tax according to prevailing IRS procedures regarding fair market value of the benefit, and it will be shown on the employee's W-2 at the end of the calendar year.

The user of the vehicle is required to keep a record of all use, business and personal, including the date used, the business or personal reason for the use, and the mileage used. Copies of the log are to be submitted to the Finance Director on a monthly basis. Failure to comply and/or falsification of records are subject to disciplinary action up to and including termination of employment.

Use of personal vehicles for County business on a regular basis is discouraged. Employees using their own vehicles to perform County business must meet the statutory levels of insurance coverage:

- Auto liability: \$50,000 per accident
 \$25,000 each person
- Property damage: \$15,000 property damage
- Uninsured motorist: Basic limit

In the event a County vehicle is not available for use and an employee needs to use their own personal vehicle to conduct County business, the County will reimburse properly documented requests for mileage reimbursement at the current IRS standard mileage allowance.

605 - Supplies and Equipment: The County provides supplies, tools and equipment for the employee's use in performing his/her job. Employees are asked to exercise care, safety, and conscientiousness in the use of the County property.

- Personal use of, or allowing others to use County property, unless previously authorized, shall not be allowed.
- Removal of the County's supplies, tools, or equipment from the County premises shall not be allowed unless it is authorized as part of the conduct of County business that is being performed off-site.
- Unsafe or careless use of County supplies, tools, equipment, and chemicals may be viewed as a violation of safety standards and may become the subject of disciplinary action.
- Personal property that is damaged or lost in conjunction with the performance of County assigned duties will be reviewed on a case-by-case basis for repair or replacement.

Archuleta County issues the following equipment to its employees:

- Safety eyewear, hard hats, safety work boots (allowance to be determine by the Public Works Director), uniforms, rain gear, gloves, coats/bibs (once a year) & vests to the Public Works Department.
- Work boots, hats, uniforms, rain gear, gun belts and accessories, weapons, ballistic vests and jackets to the Sheriff Office employees.
- The Assessor's office issues hard hats, gloves, coveralls, snow shoes, jackets and raingear.

702 - Job-Related Expenses: Request for reimbursement of out-of-pocket expenses are to be submitted to the County Finance Department by the employee's supervisor, Department Head or Elected Official (as defined) on the appropriate reimbursement form showing itemized expenditures, substantiating receipts, and Department Head or Elected Official (as defined) approval. Expense payments are made on a monthly basis. Expenses for reimbursement include the following:

Mileage for Use of Personal Vehicle - Employees shall use County-owned vehicles for business use, if they are available and it is practical to do so. Employees must check with the Department Head or Elected Official (as defined) for availability, and will be reimbursed for use of their own vehicles when a County-owned vehicle is available (reimbursed at 50%).

If a County vehicle is not available or practical to use, an employee may use his/her own vehicle when it is authorized in advance by the Department Head or Elected Official (as defined). If an employee must use his/her own vehicle for business and does not receive some form of direct payment for the fuel to be used, the County will reimburse the employee at the per mile rate established by the standard IRS rate.

Other Expenses - Other expenses such as parking fees, meals, cab fares, tips, approved travel, required telephone calls, and other incidentals are eligible for reimbursement. Employees must provide substantiating cash receipts with supervisory approval to receive any reimbursement.

The guidelines for official travel may apply. Employees shall refer to the Official Travel section and verify the guidelines, reimbursable, and per diem amounts.

Travel - All out-of-state travel must have the prior written approval of the Department Head or Elected Official (as defined).

Employees should utilize the County's tax-exempt number as appropriate. The tax-exempt number may be obtained from the Finance Department or your Department Head or Elected Official (as defined).

Uniforms - Uniforms and apparel paid for by the County are approved annually as part of the budget process. The County provides specific benefits for employees who are required to wear gloves, safety shoes, eye protection, body armor, hardhats, etc.

Safety Equipment - All employees required to wear safety equipment in their jobs will be provided with County-approved equipment upon beginning employment. This equipment considered County property and must be returned upon termination. Safety equipment is to be kept within the workplace and worn as circumstances and safety guidelines dictate.

ADENDUM TO COMPLAINT NO. 22-34

TO: Independent Ethics Commission (IEC)

FROM: Matthew H. Roane

DATE: 3/28/23

RE: Addendum to Complaint No. 22-34.

This addendum is submitted in further support of Complaint No. 22-34. Herein, I document a more complete statement of the facts raised in the original complaint. I also provide a more thorough and pointed analysis of the applicable law in the matter.

MY ANALYSIS OF THE FACTS

On October 27, 2022, the Pagosa Springs Sun newspaper (“the Sun”) reported that Archuleta County Commissioner Warren Brown had recently begun receiving payments from the County for mileage travelled in his personal car. (“County Begins Paying Commissioners Mileage”, The Pagosa Springs Sun, p. A10. A copy of the article is attached as Exhibit A.) The payments were the result of a new county program which had begun only two months earlier.

The Sun’s article noted, “Mileage sheets for Archuleta County Commissioner [redacted] and Commissioner Warren Brown include distances to the commissioners’ homes from their offices” The Sun then attached a picture of a completed mileage tally sheet for Commissioner Brown which indeed noted the mileage between his home and his official office (6.4 miles). The mileage sheet also evidenced mileage totals for daily distances travelled on

September 19, 21, and 30, 2022, equaling twice the Commissioner's one-way commute.¹ The Sun paraphrased Archuleta County Manager Derek Woodman as saying, "the mileage that can be reimbursed includes travel to and from [the commissioners'] homes"

As a part of its reporting, the Sun submitted an open records request to Archuleta County seeking all check requests for Commissioner Brown's travel beginning September 1, 2022, through December 31, 2022. (A copy of the record request is attached hereto as Exhibit B and referenced in the Sun's article.). That request produced 2 mileage tally sheets for Commissioner Brown and two associated payment checks. The two mileage tally sheets included 5 days where Commissioner Brown's total recorded mileage equaled twice the distance of his one-way commute between his home and office, or 12.6 miles total. (Copies of the mileage tally sheets and associated checks are attached hereto as Exhibit C.)

As a result of the Sun's article and associated records, I concluded the seemingly obvious – Archuleta County paid Commissioner Brown for miles he drove in his personal car commuting back and forth between his home and his county office. I believe the mileage tally sheets that show daily totals equaling 12.6 miles, or twice Commissioner Brown's one-way commute, reveal the practice without much doubt. I suspect Commissioner Brown also included commuting miles on other days' mileage tallies. Those commuting miles, however, would have been commingled with other genuine business-related travel providing a greater daily total than his commuting miles, alone, would account for. I suspect the commuting miles were accounted for, nonetheless, and that Archuleta County paid Commissioner Brown for them.

¹ Commissioner Brown routinely recorded 12.6 miles as his daily mileage rather than 12.8 miles which would be twice his one-way commute (2 x 6.4). The discrepancy is presumably the result of a math error or rounding convenience.

MY ANALYSIS OF THE LAW

Colorado law clearly identifies the circumstances under which a county commissioner may receive reimbursement for miles travelled in his or her personal car. C.R.S. § 30-2-103 states, “County commissioners shall be allowed their actual and necessary maintenance expenses, together with such mileage as shall be determined by resolution of the board of county commissioners of the county... within the limits provided under section 30-11-107(1)(t), for each mile actually traveled whether within or without the state *when engaged in business on behalf of the county....*” (Emphasis added.) I interpret this statute by giving its words their plain and ordinary meaning. Accordingly, I believe a county must pay its commissioners for driving miles incurred while he or she is engaged in business on behalf of the county, *but only* when the miles are incurred when engaged in business on behalf of the county.²

If the IEC ultimately agrees with my interpretation of C.R.S. § 30-2-103, the facts revealed in the Sun’s article beg the question – **Was Commissioner Brown engaged in business on behalf of Archuleta County when he commuted directly between his home and his official office at the beginning and end of each workday?** If commuting qualifies as official business under the statute, then I concede payments for the drives would be lawful. If commuting does not qualify as official business, then payments for the drives would not be lawful.

² In my original Formal Complaint Form, I questioned the existence of a county resolution authorizing payment of Commissioner Brown’s commuting miles (Question 2a). I also questioned whether Commissioner Brown qualified as an “employee” under the County’s Personnel Policy and Procedures Handbook (Question 1). Subsequent legal research into the legislative history of C.R.S. § 30-2-103 has convinced me that these questions are not relevant to my present ethical concerns. A local resolution may only set the amount a county pays its commissioners for driving miles incurred (which I am not concerned about in this case). The resolution cannot impact a county’s underlying obligation to pay its commissioners some amount for driving miles incurred while conducting official county business (which is what I am concerned about). C.R.S. § 30-2-103 requires a payment *as long as* mileage was incurred “when engaged in business on behalf of the county.” The existence of a local resolution plays no role in establishing that baseline obligation.

Personally, I do not equate commuting directly between one's home and one's regular office with conducting official business on behalf of a county. Unfortunately, my legal research does not reveal any published appellate opinions that support or contradict my impression. There simply appears to be no reported opinions in Colorado that decipher what the General Assembly intended when it originally adopted the phrase "when engaged in business on behalf of the county." Consequently, I must leave the question for the IEC to answer in hopes it has better research resources than me.

Despite my inability to definitively answer the legal question posed above, I believe can add one note of relevance. If the IEC ultimately decides that a county commissioner's daily commute does not constitute official business activity, I believe Commissioner Brown's payments for daily commutes are unlawful. Period. Archuleta County is *not* a home-rule county. As such, the County's authority to pay its commissioners is governed exclusively by state statute. The County cannot pass any local resolution that exceeds its statutory authority in any given subject matter. This means the County has no authority to adopt any local resolution that proposes to pay its commissioners for mileage incurred while engaged in any activity *other than* official county business as C.R.S. § 30-2-103 dictates. In the Sun article, the County Manager suggested that Archuleta County's Personnel Policy and Procedures Handbook authorized the payments to Commissioner Brown for his commuting miles. If the IEC determines that commuting does not constitute official county business, then any provision in the Personnel Policy that purports to pay commissioners for driving miles incurred *other than* when they are conducting county business is inconsequential. The provision would be unenforceable as violative of the clear limitation set forth in C.R.S. § 30-2-103.

MY ETHICAL CONCERNS

If the IEC ultimately agrees that Commissioner Brown's acceptance of payments for miles incurred commuting to his office was unlawful under C.R.S. § 30-2-103, I recognize that decision does not conclude the IEC's job. The Commission's ultimate task is to decide whether such unlawfulness constitutes an ethical violation of a state statute or the state's constitution. To that end, I pose the following concern. If Commissioner Brown accepted mileage payments in violation of C.R.S. § 30-2-103, would such unlawful action violate Colorado's Constitution, Article XXIX, Section 3(1)? As the IEC knows far better than I, that section prohibits any local governmental official from accepting or receiving money from any other person without giving such other person lawful consideration in return. A county commissioner qualifies as a "local government official". (IEC Advisory Opinion 12-05). And the government qualifies as "a person". (IEC Position Statement 9-04). So, the Section would seem to apply. See also Colo. Const. Art. XXIX, Section 3(3)(h) – compensation paid to a recipient that is not in the normal course of employment is *not* excluded from consideration as an illegal gift.

Section 3 might not be the only statutory on constitutional prohibition that Commissioner Brown's mileage payments violate, but it is the one I am aware of, and the one I would initially like to know if Commissioner Brown violated. If the Commissioner's acceptance of the payments potentially violated other provisions of the state's statutes or constitution, I look forward to the IEC's investigation into those other areas and welcome any conclusions resulting therefrom. See also Colo. Const. Art. XXIX, Section 1 (personal financial gain through public office other than compensation provided by law).

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.

March 28, 2023.

A handwritten signature in black ink, consisting of a stylized 'M' followed by a long horizontal stroke.

Matthew H. Roane

EXHIBIT A

County begins paying commissioners mileage

By Josh Pike
Staff Writer

Documents obtained by The SUN through a Colorado Open Records Act request indicate that some of the Archuleta County commissioners are receiving reimbursements for their mileage expenses, including to and from their homes, under a new county policy.

In an interview, County Manager Derek Woodman explained that Archuleta County learned that other counties "across the state are reimbursing their commissioners for their actual expenses."

Woodman cited the practice is supported by Colorado Revised Statute 30-2-102, which states, "All actual and necessary expenses of an elected officer incurred while engaged in business on behalf of the county may be allowed by the board of county commissioners and paid out of the county treasury."

He explained that the mileage that can be reimbursed includes travel to and from their homes and any travel for county commissioners' business, such as attending meetings in Durango, although mileage reimbursements cannot be claimed for personal travel, such as doing errands or going to lunch.

Woodman stated that the reimbursements could be claimed by other county elected officials as well, but added, "to the best of my knowledge, none of them knew about this and none of them made the request."

When asked about whether the other elected officials have been informed about this program, Woodman said, "I work for the commissioners; I don't work for the other elected officials."

In response to a question about if the mileage reimbursements are being taxed, Woodman stated, "It's the IRS rate that they're being allocated."

He explained that research on the program began in July and the program started for the week of Aug. 28, with reimbursements being given at two-week intervals.

Woodman also explained that the commissioners adopted this policy as a part of adopting Resolution 2016-22, "Adopting An Updated Personnel Policy And Procedures Handbook For County Employees," which he noted has been frequently amended by vote of the commissioners since 2016.

In an interview, Commissioner Ronnie Maez indicated that he has declined to participate in the reimbursement program.

The reimbursement checks and mileage records obtained by The SUN indicate that Commissioner Alvin Schaaf received \$420 dollars of reimbursements during this period at a rate of 62.5 cents per mile for 672 miles of travel.

The mileage charts indicate that the distance to Schaaf's home is 24

Documents courtesy
Archuleta County

Mileage sheets for Archuleta County Commissioner Alvin Schaaf and Commissioner Warren Brown include distances to the commissioners' homes from their offices, recorded mileage and rate, approval dates, and the initials of the person responsible for approval, County Manager Derek Woodman.

Warren Brown		6.4 Miles Home to Office						
December	Sun	Mon	Tue	Wed	Thurs	Fri	Sat	
Date	18	19	20	21	22	23	24	
Mileage		12.6	20.9	12.6	32.2	18.2		96.5
Date	25	26	27	28	29	30	31	
Mileage		24	26.4	19.2	15.1	12.6	24	121.3
Total Miles								217.8
Total Reimbursement								\$ 136.13
IRS Rates 7/1 through 12/31/2022 is 62.5 Cents Per Mile								
Turn in Monday, January 2								
Fund: 100 Approved for Payment								
Vendor: 4964 Date: 9/30/2022								
Inv. # 1) 4. 4110.5804 \$ 136.13								
2) \$								
3) \$								
4) \$								

Alvin Schaaf		24 Miles Home to Office						
September	October	Mon	Tue	Wed	Thurs	Fri	Sat	
	Sun	25	26	27	28	29	30	1
Date			48	48		48		
Mileage					6	7	8	144
Date	2	3	4	5	6	7	8	
Mileage			48	48				96
Total Miles								240
Total Reimbursement								\$ 150.00
IRS Rates 7/1 through 12/31/2022 is 62.5 Cents Per Mile								
Turn in Monday, October 10th								
Fund: 100 Approved for Payment								
Vendor: 4964 Date: 10/12/2022								
Inv. # 1) 4. 4110.5804 \$ 150.00								
2) \$								
3) \$								
4) \$								
PO# Total \$ 150.00								

miles from his office and he traveled 48 miles daily two to three days a week in performance of his duties as commissioner.

In an interview, Schaaf indicated that he accepted the reimbursements because he is using his personal vehicle for commissioner activities, which include "driving back and forth to work and going to other meetings," and because such reimbursements are allowed under state statute.

He explained that he also sometimes drives his brand inspector vehicle and that he does not accept reimbursements for travel with that vehicle.

The mileage documentation also indicates that Commissioner Warren Brown was reimbursed \$318.14 dollars for mileage during the period for traveling 509 miles.

The charts indicate that Brown's home is 6.4 miles away from his office and that he traveled an average of five days a week with distances ranging from 12.6 miles to 32.2 miles.

In an interview, Brown explained that he took the reimbursements "because that is what is allowable by statute. And I'm not sure it is appropriate that we have any employee of the county supplementing the county's budget. ... I have a lot of meetings. I have had breakfast, lunch, dinner, coffee with many constituents. I've never turned

those expenses in, ever, and they're pretty considerable. Nor have I ever allowed anyone to buy me anything along that line because for me it's an integrity issue. When it was brought to my attention that this is an expense that is compensable and it is part of the job, why would I not?"

Brown explained that he records travel expenses for county business such as attending meetings and events.

Brown also commented on the differences between the commissioners on accepting reimbursements, saying, "I'm not a commissioner that shows up twice a week for a couple hours a day. I have made the commitment that this is going to be my full-time employment and I have made that commitment, and I'm here and I'm working many hours a week every single week. And if I'm not, of course, why would I ask for mileage reimbursement? Because that would be unethical. But the fact of the matter is, I would guess, I don't know this ... that I am working more hours than any commissioner has worked in the recent history. When I'm asked to be at a community event, I take that as a very serious part of this job. And it seems that I make myself more available than some others. And it could be because they have other jobs that won't let them or whatever — and I'm not throwing anyone under the bus — all I'm saying is that I made

this commitment."

He emphasized that he feels that attending public events is important and questioned whether he should pay for driving his own vehicle to such events when he is there representing the county.

"I don't think I should. I think that is a valid and genuine expense," he said.

He also emphasized his dedication to ethics and stated that the mileage reimbursements are not outside the norm for commissioners in the state.

He added, "It may be something that is a little outside the norm here, but I have to tell you, since I've been in office, I've done a lot of things that have been outside of the norm because that's what needs to be done because we've been getting exactly what we've always been getting and it just hasn't worked. And, so, more effort, more time, more mileage."

Brown also stated that all the mileage he is charging for is with his personal vehicle, adding that any alternative to this would be unethical.

josh@pagosasun.com

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This newspaper will not knowingly accept any advertising for real estate which is in violation of the law. Our readers are hereby informed that all dwellings advertised in this newspaper are available on an equal opportunity basis. To complain of discrimination call HUD toll-free at 1-800-669-9777. The toll-free number for the hearing impaired is 1-800-927-9275.



SUN photo/Josh Pike
A dump truck sits after hitting a UPS truck, two driving vehicles, a parked vehicle and a building downtown shortly before 2 p.m. Friday afternoon, Oct. 21. According to Brooks Brown, assistant Pagosa Springs police chief, the driver reported trying to downshift around 14th Street while eastbound on U.S. 160, but that they were unable to get the truck into another gear and the brakes were not working. The incident is under investigation.

Child

■ Continued from A9
like 4-H, Fellowship of Christian Athletes and Valor School are filling boxes.

All you have to do is pick a girl or boy ages 2-4, 5-9 or 10-14 and go shopping with your box in the cart. Fill it with basic items like a toothbrush, bar of soap, washcloth, crayons, a pencil and a coloring book or index cards. A wow toy like a soccer ball and pump, doll or a stuffed animal, car or bag of marbles will change a life forever.

You can personalize your gift with a note of encouragement and a picture of yourself. Please don't put candy or toothpaste inside your gift so it will meet custom regulations. Sticker labels are provided in each box along with an envelope for postage.

Help our little mountain town touch lives of needy children around the world this Christmas and reach our goal of 2,500 shoeboxes. Our collection week is Nov. 14-21. The drop-off loca-

tion is Grace in Pagosa, 1044 Park Ave., next door to the recreation center. Please return your filled boxes during the following times below and bring joy to a child this Christmas:

- Nov. 14, 1-3 p.m.
- Nov. 15, 1-3 p.m.
- Nov. 16, 1-3 p.m.
- Nov. 17, 1-3 p.m.
- Nov. 18, 1-3 p.m.
- Nov. 19, 1-3 p.m.
- Nov. 20, 1-3 p.m.
- Nov. 21, 8-10 a.m.

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EXHIBIT B



ARCHULETA COUNTY OPEN RECORDS REQUEST FORM

Requestor Information			
Requestor Name:	Terri House	Request Submittal Date:	10/21/22
Mailing Address:	PO Box 9, Pagosa Springs, CO 81147	Submittal Time:	9:00 a.m./p.m.
Phone Number:	970-264-2100		
Email Address:	terri@pagosasun.com		

Signature of Requestor: _____

Terri House

Description of Information Requested

Request Addressed to: Louise Woods, Derek Woodman, Mary H. (Must be addressed to the proper custodian for the records sought.)

Item 1:

(Please describe in detail)

Check requests for commissioner travel from 9/25/22-10/08/22 and 7/1/22-12/31/22 for Alvin Schaaf, Warren Brown and Ronnie Maez, based on payables for these same dates. If possible, please provide these requests via email to avoid CORA expenses.

If these records are not in your custody or control, will you please forthwith so notify me and state in detail to the best of your knowledge the reason for the absence of the records, their location, and what person or persons has custody or control of the records, as required by §24-72-203(2), C.R.S.

Will you please set a date and hour within three working days at which time the records will be available for inspection, pursuant to §24-72-203(3), C.R.S. If there is a cost associated, please inform me of those costs prior to fulfilling this request.

Please contact me with any questions about my request. Thank you for your time.

(Use additional page for additional items requested.)

Section below to be completed by County Official.

Request Received By: <u>Louise Woods</u>	Date: <u>10-21-22</u>
Request <u>Approved</u> or Rejected <small>(circle one)</small>	Date: <u>10-21-22</u>
Records Delivered To: <u>Terri House</u>	Date Delivered: <u>10-21-22</u>
Delivery Method: <u>Email</u>	
If request denied, reason for denial:	Request Status Confirmed By:
Delivery Signature: _____	Received Signature: _____

PURSUANT TO THE COLORADO OPEN RECORDS ACT, THE CUSTODIAN OF RECORDS HAS THREE WORKING DAYS TO RESPOND TO THIS REQUEST ABSENT EXTENUATING CIRCUMSTANCES. Records that are prohibited from disclosure under CORA or other statute(s) cannot be made available to the public. Archuleta County may also hold certain private and/or financial information about individuals that will not be released except upon the approval of that individual. A per-hour charge, as allowed by C.R.S. 24-72-205, may be assessed. All requests for copies of public records will be fulfilled in a timely manner provided that research, copying and other costs and fees, as estimated by the custodian and communicated to the person requesting the information are paid. Please see the County Fee Schedule for current fees.

EXHIBIT C

Warren Brown

December

6.4 Miles Home to Office

	Sun	Mon	Tue	Wed	Thurs	Fri	Sat	
Date	18	19	20	21	22	23	24	
Milage		12.6	20.9	12.6	32.2	18.2		96.5
Date	25	26	27	28	29	30	31	
Milage		24	26.4	19.2	15.1	12.6	24	121.3

Total Miles 217.8

IRS Rates 7/1 through 12/31/2022 is 62.5 Cents Per Mile

Total Reimbursement \$ 136.13

Turn in Monday, January 2

Fund: 100	Approved for Payment
Vendor: A954	Date: 9/30/2022
Inv. #	Approval: [Signature]
1) 4. 4110.5804	\$ 136.13
2)	\$
3)	\$
4)	\$
PO#	Total: \$ 136.13

RECEIVED

SEP 30 2022

Per _____

161113

10/04/2022

01-04954

WARREN BROWN

DATE

I.D.

PO #

DESCRIPTION

AMOUNT

09/30/2022 07-1 TO 12-31 2022
IRS RATES 7-1 TO 12-31 2022

COMMISS-TRAVEL 7-1 TO 12-31,22

136.13

CHECK TOTAL

136.13

161113

10/04/2022

01-04954

WARREN BROWN

DATE

I.D.

PO #

DESCRIPTION

AMOUNT

09/30/2022 07-1 TO 12-31 2022
IRS RATES 7-1 TO 12-31 2022

COMMISS-TRAVEL 7-1 TO 12-31,22

136.13

CHECK TOTAL

136.13

PLEASE DETACH STUB BEFORE DEPOSITING

FOR SECURITY PURPOSES, THE FACE OF THIS DOCUMENT CONTAINS A TWO-TONED COLORED BACKGROUND AND MICROPRINTING IN THE BORDER



Archuleta County
Board of County Commissioners
P.O. Box 1507
Pagosa Springs, CO 81147
POOLED CASH ACCOUNT

Wells Fargo Bank N.A.
50 Harman Park Dr.
Pagosa Springs, CO 81147

23-7/1020

TREASURER
OF SAID COUNTY

AND CHARGE TO THE COUNTY
FUND NOTED ABOVE

DATE

10/04/2022

AMOUNT

\$*****136.13

PAY ----- ONE HUNDRED THIRTY SIX & 13/100 DOLLARS -----

VOID 90 DAYS FROM DATE OF ISSUE

TO THE ORDER OF WARREN BROWN
109 CAPE PL
PAGOSA SPRINGS, CO 81147

Kevin Schaefer
CHAIRMAN, BOARD OF COMMISSIONERS

ATTEST

Kristy Archuleta
COUNTY CLERK

SECURITY FEATURES INCLUDED. DETAILS ON BACK

⑈ 161113 ⑈ ⑆ 10200076⑆ 7036142847 ⑈

Warren Brown

September October

6.4 Miles Home to Office

	Sun	Mon	Tue	Wed	Thurs	Fri	Sat	
Date	25	26	27	28	29	30	1	
Milage		24	26.4	26.2	12.6	12.6	24	125.8
Date	2	3	4	5	6	7	8	
Milage		19.2	20.8	16.4				56.4

Total Miles 182.2

Total Reimbursment \$ 113.88

IRS Rates 7/1 through 12/31/2022 is 62.5 Cents Per Mile

Turn in Monday, October 10th

Fund: 100	Approved for Payment
Vendor:	Date: 10/12/2022
Inv. #	Approval: [Signature]
1) 4,4110.5804	\$ 113.88
2)	\$
3)	\$
4)	\$
PO#	Total: \$ 113.88

161255

10/18/2022

01-04954

WARREN BROWN

DATE	I.D.	PO #	DESCRIPTION	AMOUNT
10/06/2022	09-25 TO 10-08-22		COMMISS TRAVEL 09-25 TO 10-08	113.88

CHECK TOTAL 113.88

161255

10/18/2022

01-04954

WARREN BROWN

DATE	I.D.	PO #	DESCRIPTION	AMOUNT
10/06/2022	09-25 TO 10-08-22		COMMISS TRAVEL 09-25 TO 10-08	113.88

CHECK TOTAL 113.88

PLEASE DETACH STUB BEFORE DEPOSITING

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Wells Fargo Bank N.A.
50 Harman Park Dr.
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161255

23-7/1020

TREASURER
OF SAID COUNTY

AND CHARGE TO THE COUNTY
FUND NOTED ABOVE

DATE	AMOUNT
10/18/2022	\$*****113.88

PAY - - - - ONE HUNDRED THIRTEEN & 88/100 DOLLARS - - - -

VOID 90 DAYS FROM DATE OF ISSUE

TO THE ORDER OF WARREN BROWN
109 CAPE PL
PAGOSA SPRINGS, CO 81147

Alvin Schaefer
CHAIRMAN, BOARD OF COMMISSIONERS

ATTEST

Kristy Archuleta
COUNTY CLERK

SECURITY FEATURES INCLUDED. DETAILS ON BACK

161255 102000076 7036142847