

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 23-23

ORDER GRANTING RESPONDENT’S MOTION TO DISMISS

IN THE MATTER OF: LIANNE JOLLON

At its February 20, 2024 meeting, the Independent Ethics Commission (“IEC”) held a hearing on Respondent Lianne Jollon’s Motion to Dismiss. Respondent argued that she is not a “government employee” within the meaning of § 2(1) of Article XXIX and therefore is not subject to the IEC’s jurisdiction. For the reasons stated below, the IEC agrees and GRANTS Respondent’s Motion to Dismiss.

Legal Authority

Under the IEC’s rules, a party may file a motion to dismiss to expedite the IEC’s consideration of a pending complaint or narrow the issues for hearing. IEC Rule 6(G). A party may file a motion to dismiss based on a lack of subject matter jurisdiction. Colo. R. Civ. P. 12(b)(1).

The IEC is a quasi-judicial body and, like a court, must dismiss without further action any matter over which it lacks subject matter jurisdiction. *Black v. Black*, 482 P.3d 460, 481 (Colo. App. 2020). The IEC has jurisdiction to consider complaints filed against, *inter alia*, “government employee[s].” Colo. Const. art. XXIX, § 5(3)(a). “Government employee” is defined as “any employee, including independent contractors, of the state executive branch, the state legislative branch, a state agency, a public institution of higher education, or any local government[.]” *Id.* § 2(1). In turn, “local government” is defined as “county or municipality.” *Id.* § 2(2).

Analysis

Respondent was the executive director of San Juan Basin Public Health (“SJBPH”), and an ethics complaint was filed against her in that capacity. A district public health agency is a creature of state law established and maintained by two or more contiguous counties to provide the functions of a county public health agency. *See* § 25-1-506(1), C.R.S. A district public

health agency has jurisdiction “over all unincorporated areas and over all municipal corporations within the territorial limit of the county or the counties comprising the district, but not over the territory of any municipal corporation that maintains its own public health agency.” § 25-1-506(2)(a)(I), C.R.S.

As demonstrated by the facts of this case, a district public health agency is a unique body politic that is overseen by its own Board of Health and has its own legal counsel, staff, property, and payroll. When Archuleta and La Plata Counties voted to dissolve SJBPH, they had to initiate a receiver action to wind-up the affairs of the agency. SJBPH was clearly a separate legal entity from either of the counties.

While Colorado revised statutes contain different interpretations of “local government” and “local government entity,” the definition that controls for the IEC’s purposes is in § 2 of Article XXIX. That provision restricts the IEC’s jurisdiction over local government employees, which it defines as employees of a “county or municipality.” Colo. Const. art. XXIX, § 2(2). Thus, the definition of “public entity” in the Colorado Governmental Immunity Act—or any of the other varying definitions of “local government” found in state statute¹—do not inform the IEC’s jurisdiction as set forth in Article XXIX.

We hold that SJBPH is not a “county” within the plain meaning of § 2 of Article XXIX. As an agency made up of member-counties, SJBPH cannot itself be a county. *See Doe 1 v. Colo. Dep’t of Public Health and Env’t*, 451 P.3d 851, 856 (Colo. 2019) (declining to hold that state agency “is a body of itself, which would be an absurd result”). Respondent was an employee of SJBPH, not a county, and therefore was not a “government employee” within the meaning of § 2.

We are sympathetic to Complainant’s cited policy reasons for including district public health agencies within the definition of local government, but the plain language of the constitutional provision controls here. *Ryser v. Shelter Mutual Ins. Co.*, 486 P.3d 344, 352 (Colo. App. 2019) (“[P]olicy does not justify disregarding the plain language of a statute.” (internal quotation omitted)); *Bontrager v. La Plata Elec. Ass’n*, 68 P.3d 555, 561 (Colo. App. 2003) (“We need not address plaintiff’s public policy arguments because we view the relevant Colorado statutes as unambiguous[.]”). Accordingly, the IEC lacks subject matter jurisdiction

¹ *See, e.g.*, the Local Government Land Use Enabling Act, § 29-20-105.6, C.R.S.; Alternative Form of Payment to Local Government Entities, § 29-11.5-101(3), C.R.S.; Local Government Uniform Accounting Law, § 29-1-502(1), C.R.S.; Urgent Incident Response Fund, § 24-33.5-1623(1)(d), C.R.S. (each containing different definitions of “local government”).

over the Complaint and the Motion to Dismiss is GRANTED. The complaint is DISMISSED with prejudice.

SO ORDERED this 1st day of March, 2024.

The Independent Ethics Commission

Cole Wist, *Chair*

Sarah Mercer, *Vice-Chair*

Lora Thomas, *Commissioner*

Daniel Wolf, *Commissioner*

Elizabeth Espinosa Krupa, *Commissioner*, not participating