

State of Colorado



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Dino Ioannides, *Executive Director*

Letter Ruling 16-05 (Jurisdiction over Special Districts)

Summary: The employees, directors, and officers of the Regional Transportation District, as such, are not subject to the provisions of Colo. Const. Art. XXIX.

I. Background

General Counsel and the Chairman of the Regional Transportation District (“RTD”) jointly submitted a request for an advisory opinion seeking clarification about the applicability of Colo. Const. Art. XXIX to the RTD. For the reasons explained below, this advisory opinion request is deemed to be a request for a letter ruling.

The RTD is a statutory political subdivision created by the Regional Transportation District Act. Article 9 of Title 32, C.R.S. Generally, the Act governs the governance, territory, facilities, funding, and taxes applicable to the RTD.

The powers, duties, functions, rights, and privileges vested in the RTD are exercised and performed by the RTD’s board of directors; the exercise of executive, administrative, and ministerial powers may be delegated by the board of directors to the officers and employees of the RTD. § 32-9-109.5(4), C.R.S. The board of directors is a 15-member board, and each member is compensated \$12,000 annually. Officers are elected by the directors to serve as chair, vice-chair, secretary, and treasurer. Officers receive no compensation in addition to that provided for their service as directors.

The RTD states that it believes its employees are not covered individuals under Article XXIX because the employees are not “public officers”, “local government officials”, or “government employees”, as those terms are defined in Article XXIX. The RTD does not seek clarification about the status of its employees under Article XXIX, but it does seek clarification pertaining to its directors and officers *vis-à-vis* the definition of “public officer” in Article XXIX.

II. Jurisdiction

The Independent Ethics Commission (“Commission”) has authority to issue letter rulings on ethics issues. Any person who is not a public officer, member of the general assembly, local government official, or government employee may submit a request to the Commission for a

letter ruling concerning whether potential conduct of the person making the request satisfies the requirements of article XXIX. § 24-18.5-101(4)(b), C.R.S.

III. Applicable Law

“Government employee” means 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, except a member of the general assembly or a public officer. Colo. Const. Art. XXIX § 2(1).

“Local government” means county or municipality. Colo. Const. Art. XXIX § 2(2).

“Local government official” means an elected or appointed official of a local government but does not include an employee of a local government. Colo. Const. Art. XXIX § 2(3).

“Public officer” means any elected officer, including all statewide elected officeholders, the head of any department of the executive branch, and elected and appointed members of state boards and commissions. “Public officer” does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses. Colo. Const. Art. XXIX § 2(6).

IV. Discussion

Although the RTD only seeks clarification concerning the status of its directors and officers with respect to Article XXIX, the Commission deems it appropriate to also clarify the status of the RTD’s employees.

The RTD is not a “local government,” as that term is defined in Article XXIX, because the RTD is neither a county nor a municipality. The RTD’s employees, directors, and officers are not “local government officials” because the RTD is not a “local government”.

The RTD’s employees, directors, and officers are not “government employees,” as that term is defined in Article XXIX, because they are not employees or independent contractors “of the state executive branch, the state legislative branch, a state agency, a public institution of higher education, or any local government”.

The employees, directors, and officers of the RTD are not members of the General Assembly, as that term is used in Article XXIX.

The RTD’s primary question is how the definition of “public officer” in Article XXIX should be interpreted.

During the Review and Comment Hearing with the Office of Legislative Legal Services, Colorado General Assembly, Ms. Jennifer Gilroy, Revisor of Statutes for Legislative Legal Services, asked Ms. Martha Tierney, an attorney who was one of the proponents of Amendment

41, whether special districts were included in the definition of “local government official”. Ms. Tiernay stated they were not. *Proposed Initiative Measure 2005-2006 #118. Concerning Ethics in Government Transcript of May 4, 2006, Review and Comment Hearing, p.11*. No questions were asked if members of special districts were included in the “public officer” definition.

However, because the definition of “public officer” means “any elected officer, including...”, it is clear that the breadth of the term “any elected officer” is contextualized by the inclusionary language that follows. Each and every term in the inclusionary language, namely “all statewide elected officeholders, the head of any department of the executive branch, and elected and appointed members of state boards and commissions”, suggests officers and appointees with *statewide* authority. Nothing in the language of the definition hints at the inclusion of more limited jurisdictional authorities, such as would exist in the RTD.

The Commission finds that the term “public officer” does not encompass the employees, directors, or officers of the RTD.

V. Conclusion

The employees, directors, and officers of the RTD, as such, are not subject to the provisions of Article XXIX.

The Commission cautions that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission therefore encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions or letter rulings related to their individual circumstances.

The Independent Ethics Commission

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