

# State of Colorado



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**Dino Ioannides**, *Executive Director*

## **Letter Ruling 24-01** (Conflicts of Interest)

**Summary:** Under the facts and circumstances of this request, it would not be a violation of Article XXIX or the conflict of interest statutes for members of a county planning commission who own property within the county to participate in drafting a master plan for a portion of the county that includes their properties.

### **I. Background**

Requestor is legal counsel to a county in southwest Colorado. During the process of drafting and adopting a Master Plan amendment, the County Planning Commission (“CPC”) has received questions from citizens regarding various property interests of members of the CPC, and Requestor asks that the Independent Ethics Commission (“IEC”) issue a letter ruling clarifying whether CPC members with a variety of property interests in the county may engage in the Master Plan process or whether such engagement would violate statutory conflict of interest provisions.

### **II. Jurisdiction**

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)(III), C.R.S. The Requestor is counsel for a government entity and, as such, is authorized to submit this request for a letter ruling.

In Position Statement 22-01, the IEC considered whether unpaid appointed or elected local government officials were subject to the IEC’s jurisdiction. The IEC concluded that the definition of “local government official” in Section 2 of Article XXIX of the Colorado Constitution did not exempt unpaid officials, in contrast to the definition of “public officer,” which applies only to state elected or appointed officials.

The IEC has jurisdiction over “other standards of conduct” in state law, in addition to the ethics provisions set forth in Article XXIX. Colo. Const. art. XXIX § 5(1). The Colorado Supreme Court has interpreted this phrase to mean “ethical standards of conduct concerning activities that

could allow covered individuals to improperly benefit financially from their public employment.” *Gessler v. Smith*, 419 P.3d 964, 971 (Colo. 2018). The standards of conduct set forth in Title 24 fit within that definition.

### III. Applicable Law

Requestor asks whether CPC members’ involvement in the Master Plan process would constitute a violation of statutory conflict of interest laws. In particular, the following provisions are relevant to the IEC’s inquiry:

§ 24-18-102(4), C.R.S.: “‘Financial interest’ means a substantial interest held by an individual which is: (a) An ownership interest in a business; (b) A creditor interest in an insolvent business; (c) An employment or a prospective employment for which negotiations have begun; (d) An ownership interest in real or personal property; (e) A loan or any other debtor interest; or (f) A directorship or officership in a business.”

§ 24-18-102(7), C.R.S.: “‘Official act’ ... means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.”

§ 24-18-109(2), C.R.S.: “A local government official ... shall not ... (b) Perform an 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...”

### IV. Discussion

The subject County has undertaken the process of revising and updating the master plan applicable to the eastern portion of the county (“Master Plan”). The Master Plan for the region was last adopted in 1989. By statute, the CPC<sup>1</sup> is responsible for creating the Master Plan, which “must show the county or regional planning commission’s recommendations for the development of the territory covered by the plan.” § 30-28-106(1), (3)(a), C.R.S. A master plan “is an advisory document to guide land development decisions.” *Id.* However, the Board of County Commissioners may make a master plan binding as part of county land use regulations after notice, hearing, and other due process requirements are satisfied. *Id.*

The draft Master Plan update sets forth a variety of broad policy recommendations intended to guide land use decisions in the eastern portion of the County. Those recommendations range from “housing access”<sup>2</sup> to “climate change and resiliency.”<sup>3</sup> The most specific

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<sup>1</sup> CPC members are appointed by the Board of County Commissioners. § 30-28-103, C.R.S.

<sup>2</sup> *E.g.*, “Add to the local land bank by identifying and acquiring properties suitable for the development of housing.”

<sup>3</sup> *E.g.*, “Update the Wildfire Mitigation and Resiliency Plan to encourage awareness of wildfire risk in future planning.”

recommendations are summaries of community feedback. From 2022 to present, CPC held over 40 public meetings to obtain such feedback.

The CPC has not yet adopted the Master Plan update. Requestor provided documentation regarding various CPC members' property interests within the Master Plan boundaries, which range from members owning their own homes to members' family owning significant tracts of land. According to the county attorney, one of the major topics during the Master Plan update process has been "the need for increased density for community housing, and where that higher density would be appropriate." Public commenters opposing the Master Plan's recommendations to increase affordable housing raised one CPC member's "family holdings in significant acreage with potential future development."

The IEC finds that such generalized interest is insufficient to rise to the level of a "financial interest" as defined in § 24-18-102 of the Colorado Revised Statutes. Previously, the IEC has explained that the conflict of interest statutes are directed at self-dealing, not policy-making where the local government official shares an interest with other citizens of the locality:

It is expected, if not encouraged, that local officials will be invested in the communities they serve, and will make policy decisions that they believe will benefit the greatest number of constituents. If the public official falls in that category of persons benefitted by their policy decisions, that fact does not create a conflict of interest, unless the public official's benefit is above and beyond that of the general public.

*See In the Matter of: P.T. Wood*, Complaint No. 20-21. As the draft Master Plan specifies,

[T]his document is intended to guide future land development and policies but is not a regulatory document. Every development application considered by the Planning Department, Planning Commission, and Board of County Commissioners is subject to meeting the applicable land use codes in place at that time and achieving harmony with the intentions and priorities expressed in the master plan.

As the Master Plan is a recommendation to the Board of County Commissioners, it is an "official act" within the meaning of §§ 24-18-102(7) and 24-18-109(2)(b), C.R.S. However, the Master Plan's general policy recommendations do not directly and substantially affect, to its economic benefit, a business or other undertaking in which any CPC member has a substantial interest, or is engaged as counsel, consultant, representative, or agent. *See* § 24-18-109(2)(b), C.R.S. The Master Plan sets forth broad and overarching goals and priorities, identifies problems, and consolidates public feedback. The Master Plan does not identify specific properties for zoning changes, much less make recommendations for such. Property ownership within the Master Plan area does not, without more, constitute a conflict of interest requiring CPC member recusal from the Master Plan process or approval.

Nor does CPC members' roles on local non-profit boards constitute a conflict of interest. Requester disclosed CPC members' various roles in community organizations, and queried about

the applicability of § 24-18-109(5)(a), C.R.S., which is a carve-out pertaining to membership on non-profit entities. That section provides:

Notwithstanding any other provision of this article 18, it is neither a conflict of interest nor a breach of fiduciary duty or the public trust for a local government official who is a member of the governing body of a local government to serve on a board of directors of a nonprofit entity and, when serving on the governing body, to vote on matters that may pertain to or benefit the nonprofit entity.

CPC members are not members of “the governing body of a local government.” The governing body of the local government is the Board of County Commissioners. However, CPC members’ roles in various community organizations—some of which are located within the Master Plan boundaries—do not constitute a conflict of interest because the Master Plan does not directly and substantially affect those non-profits. As discussed above, the Master Plan is an advisory document with broad recommendations.

Absent a “direct and substantial” effect on either a property interest of a CPC member or a nonprofit on which a CPC member serves, no conflict of interest exists under § 24-18-109, C.R.S.

## **V. Conclusion**

Under the facts and circumstances of this request, it would not be a violation of the statutory conflict of interest provisions for CPC members with a variety of property interests and nonprofit entity memberships in the Master Plan area to engage in the Master Plan process.

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

## **The Independent Ethics Commission**

Cole Wist, *Chair*

Sarah Mercer, *Vice-Chair*

Elizabeth Espinosa Krupa, *Commissioner* (not participating)

Lora Thomas, *Commissioner*

Daniel Wolf, *Commissioner*

Dated: February 23, 2024