

State of Colorado



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Position Statement 09-02 (Restrictions on Representation after Leaving Office)

I. Introduction

The Colorado Constitution authorizes the Independent Ethics Commission ("IEC" or "Commission") to give advice and guidance on ethics issues arising under Article XXIX of the Colorado Constitution and any other standards of conduct and reporting requirements as provided by law. The IEC issues this Position Statement for the purpose of clarifying the provisions of Section 4 of Article XXIX of the Colorado Constitution. This section relates to restrictions imposed by Article XXIX to activities by statewide elected officials and members of the general assembly. It is the Commission's hope that this Position Statement will increase the awareness of public officials and employees and the public at large. The Commission encourages public employees and officials to request further clarification if needed, through a request for advisory opinion.

II. Guiding Principles

The Commission reaffirms its Guiding Principles as set forth in Position Statement 08-01 (Gifts). The Commission continues to apply applicable constitutional guidelines, and to interpret Colorado Constitution Article XXIX in a manner that preserves what it believes was the intent of the electorate – "to improve and promote honesty and integrity in government and to assure the public that those in government

are held to standards that place the public interest above their private interests.” The Commission also references Section 6, which provides that those who breach the public trust for private gain or induce such breach shall be liable for monetary penalties.

III. Applicable Law.

Section 4 of Article XXIX restricts the subsequent employment of certain elected officials after leaving office. Section 4 states:

No statewide elected officeholder or member of the general assembly shall personally represent another person or entity for compensation before any other statewide elected officeholder or member of the general assembly, for a period of two years following vacation of office. Further restrictions on public officers or members of the general assembly and similar restrictions on other public officers, local government officials or government employees may be established by law.

Section 2 of Article XXIX (Definitions) reads in relevant part:

(5) “Professional lobbyist” means any individual who engages himself or herself or is engaged by any other person for pay or for any consideration for lobbying. “Professional lobbyist” does not include any volunteer lobbyist, any state official or employee acting in his or her official capacity, except those designated as lobbyists as provided by law, any elected public official acting in his or her official capacity, or any individual who appears as counsel or advisor in an adjudicatory proceeding.

IV. Discussion

A. Prohibited Activities/Professional Lobbying

1. Lobbyists Registered under C.R.S. § 24-6-301

Article XXIX, Section 4 expressly prohibits elected office holders and members of the general assembly from personally representing persons or entities for compensation before statewide elected office holders or members of the general assembly for a period of two years. The term “personally represent” is not defined in Article XXIX. The Commission realizes that the term “personally represent” could encompass several

different situations including, but not limited to, traditional lobbying, representing a client as an attorney, or representing an individual as an agent or in some other capacity. Because of this ambiguity, the Commission reviewed the history of Section 4 to discern the intent of the voters. It is established under Colorado law, that while not binding, the Blue Book provides important insight into the electorate's understanding of a ballot measure. See, Sanger v. Dennis, 148 P 3d 404, 413 (Co.2006), citing Tivolino Teller House, Inc. v. Fagan, 926 P 2d 1208, 1214 (Co. 1996).

In the Review and Comment Hearing conducted by the Office of Legislative Legal Services, Martha Tierney, one of the proponents of the Amendment, when asked about the meaning of Section 4 stated, “[i]t is not our intent that it would restrain one-on-one lobbying. We believe this language would apply to lobbying before any member of the general assembly.” *Proposed Initiative Measure 2005-2006 #118. Concerning Ethics in Government Transcript of May 4, 2006 Review and Comment Hearing, p. 23.*

The *Summary and Analysis in the 2006 State Ballot Information Book* (“Blue Book”) published by the legislature and distributed to voters prior to the 2006 General Election supports the interpretation that this section was meant to restrict professional lobbying. The Blue Book states that the Amendment

also prohibits statewide elected officeholders and state legislators from lobbying professionally for two years after leaving office. This restriction applies only to lobbying a state legislator or a statewide elected officeholder. Professional lobbying is when a person is paid to advocate an interest or position to policymakers. *Blue Book p. 9.*

Therefore, the Commission determines at this time that the term “personally represent” was intended to mean that elected office holders and members of the

general assembly are prohibited from serving as “professional lobbyists” for two years following leaving office.

As stated in Position 09-01 (Gifts from Lobbyists), the definition of professional lobbyist found in Article XXIX is substantially the same as that found in C.R.S. §26-6-301(6), and “[r]egulations and opinions relating to lobbyists, as promulgated and issued by the Secretary of State’s office, should be highly persuasive in applying and interpreting who is a ‘professional lobbyist,’ as defined in Article XXIX Sec. 2(5).” See Position Statement 09-01, pp. 4-5. ¹

This may mean that an office holder or member of the general assembly would be barred from accepting a position of Executive Director of a trade organization or similar lobbying organization, even if that former elected official never actually appeared before the general assembly, if their activities fell within the purview of the Secretary of State’s Rules and Regulations and other applicable laws. Simply stated, any former elected office holders or members of the general assembly cannot accept employment that will also require their registration as a professional lobbyist under § 24-6-301.²

¹ Volunteer lobbyists are expressly excluded from the definition of professional lobbyists in Article XXIX, Section 2(5). Volunteer lobbyists, whose only compensation is “receipt of money or other thing of value consist[ing]... of nothing more than reimbursement for actual and reasonable expenses” are also not required to register or file reports with the Secretary of State’s Office. C.R.S. §24-6-301(7). Thus, nothing in Section 4 would preclude a former statewide elected official or member of the general assembly from working as a volunteer lobbyist within two years after leaving office.

² Commission is aware, furthermore, that several states and the federal government have similar “revolving door” provisions, which limit the ability of specified public officials from appearing before legislative committees or contacting public officials on official matters within a prescribed period after leaving office. These statutes and rules vary greatly from state to state. See, e.g., §18 USC 207(e)(1)(a) (2008) (a former Member of Congress is prohibited from contacting a Member of Congress for one year with the intent to influence the Member of Congress in his or her official capacity). Connecticut, Iowa, Kentucky New Jersey, and North Carolina prohibit former legislators from becoming registered lobbyists. Delaware, New Mexico and West Virginia exempt members of the state legislature from their revolving door provisions. Arkansas, Georgia, Idaho Illinois, Indiana, Illinois, Maine, Minnesota, Nebraska, Nevada, New Hampshire, North Dakota, Tennessee, Texas, Utah, and Vermont do not have revolving door restrictions.

2. Legislative Liaisons

In Colorado, each principal department of state government designates a particular individual to be responsible for lobbying activities for the department. These legislative liaisons are required to register with the Secretary of State. See C.R.S. §24-6-303.5. Although the Commission recognizes that legislative liaisons are required to register under a different statute than other professional lobbyists, do not pay a registration fee, have different reporting requirements than other professional lobbyists, and are not listed as professional lobbyists on the Secretary of State's website, we find no basis in the definition of professional lobbyist which would permit an exemption for lobbyists who work for governmental entities. The Commission consequently determines that a former statewide elected official or member of the general assembly could not accept a position as a legislative liaison for a state agency within two years of leaving office.

The IEC therefore finds that the statewide elected officials and members of the general assembly are barred from becoming professional lobbyists as that term is defined in Article XXIX (2)(5) for a period of two years. If a former statewide officeholder or member of the general assembly would be required to register as a lobbyist under the Rules of the Secretary of State, and other relevant laws and statutes in his or her new position, then the former elected official could not accept that employment.

B. Other Governmental Employment

Statewide elected officials or members of the general assembly are frequently appointed or asked to serve in the Governor's cabinet or in other governmental

positions. The Commission determines that it would be permissible under Article XXIX Section 4 for a former statewide elected official or a member of the general assembly to accept another job in state government, such as a position in the Governor’s cabinet, within two years of leaving elected office. The fact that a cabinet member or other state employee may appear before a committee of the general assembly and perform other “lobbying” activities incidental to his or her primary responsibility does not disqualify that former elected official from meeting with another statewide elected official or member of the general assembly on behalf of a state agency. The Commission notes that “[m]embers of the governor’s cabinet and personal staff employees in the offices of the governor and lieutenant governor” are specifically excluded from the requirement to register as a lobbyist. C.R.S. § 24-6-303.5(4)(c).³

V. Conclusion

This, as all Position Statements, is intended to give broad advice to government officials and employees and the public. The Commission encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinion and letter ruling.

The Independent Ethics Commission

Matt Smith, Chairperson
Roy Wood, Vice Chairperson
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³ Many other governmental employees, such as members or employees of the legislative and judicial branches and members of boards and commissions who serve without compensation are similarly excluded from having to register with the Secretary of State. C.R.S. §24-6-303.5(4).

