

State of Colorado



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Position Statement 22-01 (Unpaid Local Government Officials)

I. Introduction

The Independent Ethics Commission (“IEC”) has recently received requests from local government officials that present the question of whether the IEC has jurisdiction over appointed or elected local government officials that do not receive a salary or other form of compensation. Based on a plain reading of Section 2 of Article XXIX, we find that the language does not exempt unpaid local government officials from the IEC’s jurisdiction.

II. Applicable Law

Section 2 is the definitions section of Article XXIX. It provides the following definitions of terms used throughout the article:

(2) “Local government” means county or municipality.

(3) “Local government official” means an elected or appointed official of a local government but does not include an employee of a local government.

* * *

(6) “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.

Section 3 of Article XXIX applies those definitions to specific standards of conduct. Section 5 sets forth the IEC’s jurisdiction over ethics complaints against a “public officer, member of the general assembly, local government official, or government employee.”

III. Analysis

The issue of whether unpaid local government officials are subject to the IEC's jurisdiction was raised recently in a letter ruling request. Given its previous guidance regarding unpaid members of state boards and commissions,¹ the Commission believes a Position Statement is appropriate to highlight the different definitions set forth in Article XXIX.

Article XXIX's definition of "local government official" as an "elected or appointed official of a local government" is without qualification, and excludes only "local government employee[s]." Colo. Const. art. XXIX, § 2(2). The definition of "public officer," on the other hand, specifically exempts unpaid board and commission members. *Id.* § 2(6). It also exempts "local government official[s]" from the definition of public officer, thereby eliminating any overlap that could be read into those definitions. *Id.*

The plain, unambiguous language of Article XXIX draws a distinction that is difficult to ignore. Local government officials are subject to the IEC's jurisdiction, and to the ethical standards set forth in Article XXIX, whether or not they are paid.² Members of statewide boards, commissions, councils, and committees, however, are subject to the IEC's jurisdiction only if they are paid more than a "per diem allowance" or reimbursement for "necessary and reasonable expenses." Colo. Const. art. XXIX § 2(6).

The plain language of a constitutional provision is the best measure of the voters' intent. *See In re Proposed Initiative on Water Rights*, 877 P.2d 321, 327 (Colo. 1994) ("[W]hen courts construe a constitutional amendment that has been passed through a ballot initiative, any intent of the proponents not adequately expressed in the language of the measure will not govern that construction."). Here, the contrast in the plain language between the exemption for unpaid board and commission members of state entities and the lack of an exemption for unpaid local government officials further counsels against the IEC reading into Article XXIX an unspoken exemption. *See, e.g., Colo. Dep't of Rev. v. Woodmen of the World*, 919 P.2d 806, 816 (Colo. 1996) (where "it would have been simple for the legislature to have included ... an exemption had it wished to do so," the court declined to "supply such an exemption by construction."). Therefore, the IEC has jurisdiction over unpaid local government officials but not unpaid members of statewide boards, commissions, councils, or committees.

This position statement is intended to give general advice to government officials, employees, and the public. The IEC encourages individuals with particular questions to seek fact-specific advice through a letter ruling or advisory opinion request.

The Independent Ethics Commission

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¹ *See* Letter Ruling 19-01.

² Local government officials are also subject to certain statutory standards of conduct, whether or not they are paid. *See, e.g.,* § 24-18-109, C.R.S.

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