



Independent Ethics Commission

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COLORADO INDEPENDENT ETHICS COMMISSION

STATE OF THE COMMISSION AND ANNUAL REPORT 2010

Matt Smith – Chairman
 Dan Grossman – Vice Chairman
 Sally H. Hopper - Commissioner
 Larry L. Lasha - Commissioner
 Roy V. Wood - Commissioner

Jane T. Feldman – Executive Director
 Doug Platt – Communication Director

INTRODUCTION

Origin of the Independent Ethics Commission

The Colorado Independent Ethics Commission (“IEC” or “Commission”) was created by a voter-initiated constitutional amendment in November 2006. The IEC is charged with the implementation of Article XXIX of the Colorado Constitution. The purpose of the IEC is to give advice and guidance on ethics issues arising under Article XXIX of the Colorado Constitution, as well as other standards of conduct and reporting requirements, and to hear complaints, issue findings, assess penalties and/or sanctions where appropriate. The Constitution gives the IEC jurisdiction over employees and elected officials in the State legislative and executive branches of government, (including members of the General Assembly and statewide elected officials), as well as employees and elected officials of county and municipal governments that: 1) are not home rule entities and, 2) do not have their own ethics ordinances.

Article XXIX specifies that the IEC has five members – four of whom are appointed by the Governor of Colorado, the Chief Justice of the Colorado Supreme Court, the Colorado Senate, and the Colorado House of Representatives, respectively. The fifth commissioner is appointed by the other four members of the IEC and must be a local government employee or elected official. Commissioners serve without compensation but are reimbursed for actual and necessary expenses incurred in carrying out their official duties. No more than two commissioners may be from the same political party. Commissioners are appointed to four-year terms and are not prohibited from being reappointed. Pursuant to Article XXIX, commissioners initially appointed by the Governor and the Senate were appointed to two-year terms to achieve staggered term ending dates and avoid a complete turnover of the Commission in future years.

The following report is a summary of Commission activity from its inception through the end of calendar year 2010.

HISTORY

2007

In the 2007 legislative session the 66th General Assembly authored and passed enabling legislation (SB07-210) to implement Article XXIX. The legislation added §24-18.5-101, C.R.S. and the bill was signed into law by Governor Ritter, effective April 26, 2007. The IEC was established in the Office of Administrative Courts under the Department of Personnel & Administration.

The initial members of the IEC were appointed as follows:

- Governor's appointee: Nancy E. Friedman (D), of Evergreen, appointed September 2007; term to expire June 30, 2009.
- Chief Justice's appointee: Matt Smith (R), of Grand Junction, appointed November 2007; term to expire June 30, 2011.
- Senate's appointee: Sally H. Hopper (R), of Golden, appointed April 2007; term to expire June 30, 2009.
- House of Representatives' appointee: Roy V. Wood (D), of Denver, appointed May 2007; term to expire June 30, 2011.
- The fifth commissioner was not appointed by the other members of the IEC until 2008.
- The Chair of the IEC serves in that capacity for one year; the Chair is chosen each year in April. Commissioner Friedman served as interim Chair of the Commission beginning December 2007.

The first IEC meeting was held on December 11, 2007.

The first budget for the IEC for FY 2007 – 2008 (July 1, 2007 – June 30, 2008) was: \$219,996.

2008

Opinions:

The IEC issued its first guidance (Position Statement 08-01) on October 6, 2008. This opinion addressed a large number of similar requests regarding the acceptance by covered individuals of such items as scholarships, insurance proceeds, prize winnings, silent auctions and inheritance.

- Position Statement 08-01: This statement addressed the issue of receipt of gifts, scholarships and other things of value by covered individuals. (10/6/08).
- Position Statement 08-02: The IEC addressed the issue of when it may be appropriate for covered individuals to accept free travel expenses. (11/21/08).
- Position Statement 08-03: This statement addresses the circumstances under which acceptance of a "special discount" is permissible under Article XXIX. (12/2/08).

Complaints:

The IEC received a total of four formal complaints in 2008. The Commission deemed one complaint non-frivolous (Complaint 08-01), and set the matter for hearing in 2009. The Commission dismissed the three remaining complaints filed in 2008 on various grounds.

- Complaint 08-01: The IEC voted 3-1 (Commissioner Smith dissenting) to deem the complaint non-frivolous and proceed to a public hearing. (Commissioner Hopper recused). (10/06/08). Following a hearing, the IEC voted unanimously to dismiss the complaint; the IEC found that respondent had not violated Article XXIX or any other standard of conduct under the jurisdiction of the IEC. (4/14/09).
- Complaint 08-02: The IEC voted unanimously to dismiss on two grounds: The Commission found the complaint frivolous, and further the alleged misconduct occurred more than 12 months prior to the filing of the complaint, pursuant to Colorado Constitution Article XXIX, Section 5(2)(3)(a) and (b), and IEC Rule 7.D. 2 and 4. (10/6/08).

- Complaint 08-03: The IEC voted unanimously to dismiss on grounds of lack of jurisdiction pursuant to IEC Rule 7.D.1, because it alleges misconduct by a member of the judicial branch. (10/06/08).
- Complaint 08-04: The IEC voted unanimously to dismiss pursuant to IEC Rule 7.D.3, because the alleged violation, if true, would not constitute a violation of Colorado Constitution Article XXIX, or any other standard of conduct or reporting requirement under the jurisdiction of the IEC. (10/06/08).

Litigation:

In September 2008, the Commission filed an action in Denver District Court seeking to preserve the confidentiality of requests for advisory opinion (08CV7995, Denver District Court). Colorado Ethics Watch filed a case against the IEC in response (08CV8857, Denver District Court). These two cases were consolidated under case number 08CV7995 and a hearing was held in May 2009. The Court ruled that pursuant to the Colorado Open Records Act, the IEC could not protect the confidentiality of requests for advisory opinions, or complaints dismissed on grounds other than frivolous.

Other Activities:

Interim Chair Nancy E. Friedman was elected Chair of the Commission in April 2008.

The Executive Director of the Commission was hired effective July 1, 2008.

IEC's appointee, and fifth member of the Commission, Larry R. Lasha (I), of Florence, was selected by the four members of the Commission on March 18, 2008.

The IEC's rules of Practice and Procedure were formally adopted following a public rulemaking hearing on July 8, 2008, and became effective September 1, 2008.

Budget:

Because the IEC did not meet until almost half way through FY 2007 - 2008, it under spent its allocated budget in the previous fiscal year. As result, the Commission's budget for FY 2008 -2009 was reduced to \$135,800. The Commission then requested and received an additional, emergency supplemental appropriation of \$148,438 in FY 08 – 09 to upgrade the Executive Director position, increase its legal services and operating budgets, contract for conflicts counsel for a particular case and hire an additional staff member. The Commission delayed the reallocation of the Executive Director's position and delayed the hiring process for the second position. In addition, the legal services budget was reduced pursuant to mandatory budget cuts imposed by the Governor in January 2009.

2009

Opinions:

The Commission received 13 requests for advisory opinions and letter rulings during calendar year 2009. In addition, the Commission issued five Position Statements relating to questions posed to the Commission. In doing so, the Commission eliminated its backlog of requests.

The Commission issued Advisory Opinions, Letter Rulings, and Position Statements on a wide variety of issues throughout 2009.

- Advisory Opinion 09-01: The IEC addressed questions posed by university professors on whether they may accept items such as travel, free textbooks and tickets to professional fundraisers. (2/20/09).
- Advisory Opinion 09-02: The IEC addressed the issue of whether Administrative Law Judges'

may accept free membership in the Denver Bar Association. (4/6/09).

- Advisory Opinion 09-03: The Governor requested guidance regarding whether members of the state patrol accompanying the Governor are allowed to accept free admission to events. (4/6/09).
- Advisory Opinion 09-05: This opinion addressed whether a government employee may accept a fellowship from a non-profit entity under certain circumstances. (5/19/09).
- Advisory Opinion 09-06: The IEC addresses the issue of whether the Secretary of State may serve on the board of a non-profit organization. (7/21/09).
- Advisory Opinion 09-07: This opinion addressed whether government employees may accept a cash prize in excess of fifty dollars from a professional organization under specific circumstances. (6/16/09).
- Advisory Opinion 09-08: The IEC addressed the issue of whether a member of the General Assembly may accept a fellowship from a non-profit entity. (8/21/09).
- Letter Ruling 09-01: The IEC addressed the issue of whether a lobbyist may take a member of the General Assembly to lunch at a private club. (2/2/09).
- Letter Ruling 09-02: The IEC addressed whether an organization that employs lobbyists may host a luncheon at which public employees and/or officials attend without paying. (2/2/09).
- Letter Ruling 09-03: This opinion addressed the issue of whether a government employee who is also a board member of a non-profit entity may accept a meal at a board meeting. (3/19/09).
- Letter Ruling 09-04: The IEC issued an oral decision regarding a request by a school board member. (8/21/09).
- Letter Ruling 09-05: This opinion addressed the issue of whether members of the General Assembly may attend an educational event sponsored by a non-profit organization. (9/21/09).
- Letter Ruling 09-06: The IEC addressed the issue of whether members of the General Assembly may participate in a tour offered by a corporation that retains lobbyists. (11/20/09).
- Position Statement 09-01: This statement addressed the provisions of Section 3(4) of Article XXIX of the Colorado Constitution, relating to gifts from lobbyists. (1/23/09).
- Position Statement 09-02: The IEC addressed the restrictions of post-employment activities upon leaving the General Assembly and statewide elected offices. (8/21/09)
- Position Statement 09-03: This statement addressed the issue of promises or negotiations of future employment by covered individuals. (9/21/09)
- Position Statement 09-04: This statement addressed the definition of the term "person" with respect to the jurisdiction of Article XXIX (9/21/09)
- Position Statement 09-05: Not issued
- Position Statement 09-06: Not issued (See Position Statement 10-01)
- Position Statement 09-07: This statement addressed the definition of the term "independent contractor" under Article XXIX. (11/20/09)

Complaints:

In March, 2009, the Commission conducted its first hearing on a complaint (Complaint 08-01). The Commission found that the respondent was not in violation of standards of conduct within the jurisdiction of the IEC. A total of 14 complaints were filed with the IEC in 2009. Thirteen complaints were dismissed as frivolous or on jurisdictional grounds. Complaint 09-08 was deemed non-frivolous and a formal hearing was set for 2010.

- Complaint 09-01: The IEC voted unanimously to dismiss pursuant to IEC Rule 7.D.3, because the alleged violation, if true, would not constitute a violation of Colorado Constitution Article XXIX, or any other standard of conduct or reporting requirement under the jurisdiction of the IEC. (01/14/09).
- Complaint 09-02: The IEC voted unanimously to dismiss pursuant to IEC Rule 7.D.3, because the alleged violation, if true, would not constitute a violation of Colorado Constitution Article XXIX, or any other standard of conduct or reporting requirement under the jurisdiction of the IEC. (02/02/09).

- Complaint 09-03: The IEC voted unanimously to dismiss for lack of jurisdiction pursuant to IEC Rule 7.D.1. This Complaint alleges ethical violations by members of a school board. Members of boards who receive no compensation other than a per diem allowance or necessary or reasonable expenses are expressly excluded from the definition of "public officer" set forth in Article XXIX Sec. 2(6). This Complaint also alleges ethical violations by an employee of a school district. A school district is not a "county or municipality" and therefore is not a "local government" under Sec. 2(2). Therefore, the employee is not a "government employee" under Sec. 2(1) and is not subject to the jurisdiction of the IEC. (04/06/09).
- Complaint 09-04: The IEC voted unanimously to dismiss this Complaint due to insufficient evidence to proceed. The failure of the Complaint to set forth a statement of facts underlying the Complaint with sufficient specificity as required by IEC Rule 7.C necessitates dismissal of the Complaint pursuant to IEC Rule 7.E.3. for failure to comply with IEC Rules of Procedure regarding Complaints. (04/06/09) (Complaint was withdrawn prior to official notification by the IEC).
- Complaint 09-05: The IEC voted unanimously (Commissioner Lasha excused) to dismiss this Complaint pursuant to IEC Rule 7.D.1.3, because the allegations, if true, do not constitute a violation of Article XXIX or any other standard of conduct or reporting requirement under the jurisdiction of the IEC. (07/21/09).
- Complaint 09-06: The IEC voted unanimously (Commissioner Lasha excused) to dismiss this Complaint pursuant to IEC Rule 7.D.1.3, because the allegations, if true, do not constitute a violation of Article XXIX or any other standard of conduct or reporting requirement under the jurisdiction of the IEC. (07/21/09).
- Complaint 09-07: The IEC voted unanimously (Commissioner Lasha excused) to dismiss this Complaint pursuant to IEC Rule 7.D.1.3, because the allegations, if true, do not constitute a violation of Article XXIX or any other standard of conduct or reporting requirement under the jurisdiction of the IEC. (07/21/09).
- Complaint 09-08: The IEC voted unanimously to find the complaint non-frivolous and directed the Executive Director to further investigate. (08/21/09). Following a hearing, the IEC voted unanimously to dismiss the complaint; the IEC found that respondent had not violated Article XXIX or any other standard of conduct under the jurisdiction of the IEC. (03/11/10)
- Complaint 09-09: The IEC voted unanimously (Commissioner Lasha excused) to dismiss this Complaint pursuant to IEC Rule 7.D.1.3, because the allegations, if true, do not constitute a violation of Article XXIX or any other standard of conduct or reporting requirement under the jurisdiction of the IEC. (07/21/09).
- Complaint 09-10: The IEC voted unanimously (Commissioner Lasha excused) to dismiss this Complaint pursuant to IEC Rule 7.D.1.3, because the allegations, if true, do not constitute a violation of Article XXIX or any other standard of conduct or reporting requirement under the jurisdiction of the IEC. (07/21/09).
- Complaint 09-11: The IEC voted unanimously to dismiss this Complaint as frivolous pursuant to Article XXIX, Section 5(3)(b) and IEC Rule 7.D.2. (8/21/09).
- Complaint 09-12: The IEC voted unanimously to dismiss the first claim as outside the 12 month period pursuant to IEC Rule 7.D.4, and to stay consideration of the second claim pending a decision by another body pursuant to IEC Rule 7.F.1. Commissioner Grossman did not participate. (10/19/09).
- Complaint 09-13: The IEC voted unanimously to dismiss for lack of jurisdiction pursuant to IEC Rule 7.D.1, because the complaint does not allege a violation against any person under the jurisdiction of the IEC. (11/20/09).
- Complaint 09-14: The IEC voted unanimously to dismiss pursuant to IEC Rule 7.D.3, because the alleged violation, if true, would not constitute a violation of Article XXIX, or any other standard of conduct under the jurisdiction of the IEC. (11/20/09).

Litigation:

The IEC intervened in the case of *Developmental Pathways v. Ritter*, (07CV1353, Denver District Court) in April 2009. This case, concerning the constitutionality of Article XXIX, was still pending at the end of 2009.

In May 2009, the Center for Independent Media filed a case against the IEC alleging violations of Colorado's Open Meetings Law (09CV5109, Denver District Court). This case was heard on July 31, 2009. The Court found that the IEC was in violation of the Open Meetings Law and ordered the Commission to turn over the tapes of several executive sessions.

In May 2009, Colorado Ethics Watch filed a lawsuit against the IEC alleging that Advisory Opinion 09-04 was contrary to law (09CV4989, Denver District Court). The Court dismissed a portion of the lawsuit, and the parties reached a settlement regarding the remaining issues.

Other Activities:

The Commission received and responded to nine requests for information pursuant to the Colorado Open Records Act.

Commissioner Sally H. Hopper's term as an appointee of the Senate expired.

Dan Grossman was appointed to replace Sally H. Hopper as the Senate representative.

Commissioner Nancy E. Friedman's term, as an appointee of the Governor, expired.

Commissioner Hopper was re-appointed to the Commission, but by the Governor, to replace Nancy E. Friedman as the Governor's representative.

Commissioner Matt Smith was elected the new Chair of the IEC in April.

The Executive Director's position was reallocated in May 2009. A second staff member, the Director of Communication, joined the Commission staff on December 17, 2009.

Budget:

The Commission's original budget appropriation for FY 2009-2010 was \$227,934 of which \$144,285 was designated for personal services; \$15,639 was for operating expenses; and the remaining \$68,000 was designated for legal services.

2010

Opinions:

The Commission received 21 requests for advisory opinions and letter rulings during calendar year 2010. In addition, the Commission issued one Position Statement.

The Commission issued Advisory Opinions, Letter Rulings, and Position Statements on the following issues throughout 2010.

- Advisory Opinion 10-01: The IEC addressed issues relating to a State employee's acceptance of an award from a professional association. (1/6/10).
- Advisory Opinion 10-02: The Commission addressed the acceptance of federal dollars to pay for State employee travel and expenses to attend training for programs supported by federal dollars. (2/11/10).
- Advisory Opinion 10-03: This opinion addressed the Governor's acceptance of payment of expenses for attendance at a National Governor's Association meeting. (2/16/10).
- Advisory Opinion 10-04: The IEC addressed whether employees of a State agency may accept donated funds from fellow employees administered by an independent employee group for reasons of financial hardship. (4/19/10).
- Advisory Opinion 10-05: This opinion addressed the issue of whether the Attorney General could participate in a public service announcement paid for by a non-profit organization. (4/19/10).
- Advisory Opinion 10-06: This opinion addressed the issue of whether a member of the General Assembly may accept travel expenses to attend a conference from a for-profit conference sponsor. (4/22/10).

- Advisory Opinion 10-07: The IEC addressed whether the Colorado Legislative Women's Caucus may partner with or form a non-profit organization to solicit funds in support of the non-profit organization. (8/19/10).
- Advisory Opinion 10-08: The Commission addressed the circumstances under which, a former State employee, may contract to work for the state agency where he previously worked prior to the expiration of the six months statutory period. (6/17/10).
- Advisory Opinion 10-09: Withdrawn
- Advisory Opinion 10-10: This opinion addressed the issue of whether the Governor and members of his staff and cabinet may accept travel expenses from a non-profit organization to attend a trade mission to a foreign country. (6/17/10).
- Advisory Opinion 10-11: The IEC addressed whether a member of the General Assembly may accept travel expenses from a foreign government to participate on a trade mission to a foreign city. (8/19/10).
- Advisory Opinion 10-12: This opinion addressed the issue of whether a State employee may accept travel expenses from a non-profit organization to travel to a foreign country. (7/1/10).
- Advisory Opinion 10-13: Withdrawn
- Advisory Opinion 10-14: This opinion addressed the circumstances under which members of the General Assembly may accept food and beverage from a political subdivision. The opinion also addressed issues relating to the solicitation of donations for the political subdivision by members of the General Assembly. (9/16/10).
- Advisory Opinion 10-15: This opinion addressed issues relating to the acceptance of travel expenses for job seeking activities by the Governor and his staff. (9/1/10).
- Advisory Opinion 10-16: Moot. See Letter Ruling 10-02.
- Advisory Opinion 10-17: The IEC addressed whether a state employee may accept travel expenses from a for profit organization doing business with the state. (10/7/10).
- Advisory Opinion 10-18: This opinion addressed the organization and funding of the gubernatorial transition. (11/5/10).
- Advisory Opinion 10-19: The Commission addressed whether a member of the General Assembly may accept travel expenses from a nonprofit organization and a governmental exchange organization. (11/5/10).
- Letter Ruling 10-01: The IEC issued an opinion regarding whether members of the General Assembly's Interim Water Resources Committee may receive a scholarship from a non-profit organization to participate in a tour. (5/26/10).
- Letter Ruling 10-02: This ruling addressed whether a former state employee could enter into a consulting contract on work related to her state employment within the six month statutory restriction period. (9/13/10).
- Position Statement 10-01: This statement addressed the circumstances under which a covered individual may accept travel expenses from a nonprofit organization and organizations to which the state is a dues-paying member. (1/6/10).

Complaints:

A total of ten new complaints were filed with the Commission during calendar year 2010. Of these complaints, seven were dismissed as either being frivolous, or not jurisdictional to the IEC under Article XXIX. The Commission heard Complaint 09-08 in 2010, which was pending at the end of 2009. Two complaints filed in 2010 remained pending at the end of the year and were set for hearing in 2011.

- Complaint 10-01: The IEC voted 4-1 (Commissioner Smith dissenting) to deem the complaint not frivolous, and directed the Executive Director to investigate further. (4/19/10). Following investigation the IEC found that there was no violation of Article XXIX or any other standard of conduct under the IEC's jurisdiction, and dismissed the complaint as groundless. (5/26/10).

Complaint 10-02: The IEC voted unanimously to dismiss this Complaint pursuant to IEC Rule 7.D.1.3, because the allegations, if true, do not constitute a violation of Article XXIX or any other standard of conduct or reporting requirement under the jurisdiction of the IEC. (04/19/10).

- Complaint 10-03: The Commission voted unanimously to dismiss for lack of jurisdiction pursuant to IEC Rule 7.D.1, because the complaint alleges a violation against an employee of a school district, and the IEC does not have personal jurisdiction over school district employees. (04/19/10).
- Complaint 10-04: The IEC voted unanimously to dismiss this Complaint as frivolous. (04/19/10).
- Complaint 10-05: The IEC voted unanimously to find the complaint non-frivolous and directed the Executive Director to further investigate. (8/19/10). The complaint was set for hearing in 2011. (12/10/10).
- Complaint 10-06: The IEC voted unanimously to find the complaint non-frivolous and directed the Executive Director to further investigate. (8/19/10). The complaint was set for hearing in 2011. (12/10/10).
- Complaint 10-07: The IEC voted unanimously to dismiss for failure to allege conduct which occurred in the previous 12 months, and as frivolous pursuant to Article XXIX Section 5(3)(a) and (b), and Commission's Rules of Procedure 7.D.2 and 7.D.4. (9/13/10).
- Complaint 10-08: The IEC voted unanimously to dismiss because alleged violation did not occur within preceding 12 months, and the alleged conduct, if true, would not constitute a violation of Article XXIX or any other standard of conduct under the jurisdiction of the IEC in accordance with Article XXIX Section 5(3)(a) and Commission's Rule 7.D.3 and 7.D.4. (9/13/10).
- Complaint 10-09: The Commission voted unanimously to dismiss because the alleged violation, if true, does not constitute a violation of Article XXIX or any other standard of conduct under the jurisdiction of the IEC pursuant to Commission's Rule 7.D.3. (9/13/10). The Commission voted unanimously (4-0) to deny a request to reconsider (11/5/10).
- Complaint 10-10: The Commission voted unanimously to dismiss because the alleged violation, if true, does not constitute a violation of Article XXIX or any other standard of conduct under the jurisdiction of the IEC. (10/7/10).

Litigation:

The case of Developmental Pathways v. Ritter, (07CV1353, Denver District Court), in which the IEC intervened in April 2009, was dismissed without prejudice in June 2010.

Other Activities:

The legislature amended §24-18.5-101, C.R.S. during the 2010 session. Pursuant to the passage of HB 10-1404, the IEC was relocated from the Office of Administrative Courts under the Department of Personnel and Administration (DPA) to the Judicial Department as an independent agency. The bill was signed into law by Governor Ritter on June 10, 2010 and became effective immediately upon his signature. This law also modified the statute regarding the time frame for the IEC to respond to requests for advisory opinions, and removed a requirement that the commissioners appointed by the House of Representatives and the Senate be from different political parties.

The IEC issued a notice of proposed rulemaking on December 15, 2010 and set the matter for hearing on January 19, 2011. These changes were proposed in order to simplify and clarify the Commission's procedures regarding complaints and regarding the process for obtaining advice from the Commission.

The Commission received and responded to nine requests for information pursuant to the Colorado Open Records Act.

Matt Smith was reelected Chair of the Commission in April 2010.

Budget:

The Commission's original budget appropriation for FY 2010-2011 was \$270,822 of which \$187,173 was designated for personal services; \$15,807 was for operating expenses; and the remaining \$67,842 was designated for legal services. The Commission's FY 2010 – 2011 budget appropriation and 2.0 FTE were transferred from DPA to the Judicial Department to facilitate the relocation of the IEC to the Judicial Department as an independent agency. In December the IEC submitted an emergency supplemental appropriation request of \$25,542 to the Joint Budget Committee. The IEC returned \$12,771 from its operating and legal services budget as part of the request (a net increase in the total budget of \$12,771). The JBC approved the request in January 2011.

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"The IEC is an independent commission, created by the voters under Article XXIX of the Colorado Constitution, committed to advancing ethics in government**