

# **COLORADO INDEPENDENT ETHICS COMMISSION**

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# Background

- Passed by voters in November, 2006; declared effective by the Governor on December 31, 2006 as Colorado Constitution Article XXIX.
- Developmental Pathways et al. v. Ritter.
  - 1. Denver District Court issues a preliminary injunction enjoining the gift ban on May 31, 2007.
  - 2. Colorado Supreme Court reverses on February 25, 2008. 178 P. 3d 524 (Co. 2008).
  - 3. Case dismissed without prejudice, June, 2010

# Other Relevant Laws and Rules

- Enabling legislation: C.R.S. § 24-18.5-101 *et seq.*
- Administrative Rules: 8 CCR 1510
- See, also, C.R.S. § 24-18-101 *et seq.*

# Article XXIX: Commission

## Creation of the Commission (Section 5)

- Appointed by :
  1. House of Representatives
  2. State Senate
  3. Governor
  4. Chief Justice
  5. Local government employee or official selected by other Commissioners
- No more than 2 from the same political party

# Current Commissioners

- Dan Grossman, chair (Term expires 6/30/2013)
- Sally H. Hopper, vice chair (Term expires 6/30/2013)
- Bill Pinkham (Term expires 6/30/2015)
- Matt Smith, (Term expires 6/30/2015)
- Vacancy (Term expires 6/30/2015)

# Authority:

- Persons subject to Commission (Section 2):
  - All state executive branch elected officials and employees
  - All state legislative branch elected officials and employees
  - Local government elected officials and employees- (includes Boards which receive a salary) unless the locality is a home rule county or municipality with an ordinance, resolution or charter concerning ethics
  - Independent Contractors
  - Employees of a “public institution of higher education”

# Independent Contractors

- Per Position Statement 09-07:

Persons under “personal services contracts” as defined in C.R.S. §24-50-502(2) are subject to the gift ban provisions for the duration of the contract. However, that employee may receive gifts from their own company or employer unless aimed at influencing an official act.

# Authority, continued

- 1. To Hear Complaints (Filing must be within 12 months of violation)
- 2. To Issue Advisory Opinions
- 3. Letter Rulings (added by statute C.R. S. §24-18.5-101)
- 4. Position Statements (added by IEC Rule 6 (8 CCR 1510))



# Authority, continued

- “...on ethics issues arising under this Article (Article XXIX) and any other standards of conduct and reporting requirements as provided by law. “ (Section 5(1))
- “standards of conduct” – primarily C.R.S. §24-18-101 *et seq.*, but other statutes as well, such as procurement codes.

## Gift Ban (Section 3)

- No gift from a “person” to any covered public official or employee with a fair market value over \$53 in any calendar year without lawful **consideration** of equal or greater value. (Raised 4/8/11. See PS 11-01)
- Gift cannot be made either directly or indirectly (i.e. to a spouse or a relative).

# **Gifts include:**

- Money (\$53 limit does NOT apply)
- Favors or Services
- Honoraria
- Travel
- Entertainment
- Special Discounts
- Loans
- Rewards
- Negotiations for Future Employment

# Negotiations for Future Employment

- PS 09-03:
  1. Compensation must be appropriate to position; and
  2. Offer cannot be made in circumstances indicative of a conflict of interest (i.e., person accepting the job cannot be in a position to take direct official action)

# Exceptions to the Gift Ban

- a. Campaign contribution
- b. Unsolicited item of trivial value less than \$53 such as a pen, calendar, etc.
- c. Unsolicited token or award such as a plaque, trophy, desk item.
- d. Unsolicited informational material

# Exceptions to the Gift Ban, cont.

- e. Admission to and the cost of food and beverages consumed at a reception, meal or meeting by an organization **before whom the recipient appears to speak or to answer questions as part of the regularly scheduled program.**

(But see Attendance at Events with the Governor Advisory Opinions 09-03 and 09-09)  
See also LR 12-01.

# Exceptions to the Gift Ban, cont.

- f. Reasonable expenses **paid by a nonprofit organization or other state or local government** for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local government, **provided that the nonprofit organization receives less than 5% of its funding from for-profit organizations or entities.** (See Advisory Opinions 11-12, 11-06, 10-19, 10-17, 10-11, 10-10, 10-06, 10-03, 10-02, Position Statement 10-01)

## **Gift Ban Exceptions, cont.**

- g. Given by an individual who is a relative or personal friend of the recipient on a special occasion. (See Position Statement 08-01(gifts) )
- h. A component of the compensation paid or other incentive given to the recipient in the normal course of employment.



# Travel Issues

- Position Statement 08-02 (Travel) set out five criteria that if met would remove a proposed trip out of Article XXIX by defining it as “a gift to the state” rather than as a gift to the individual public official or employee.
- Although not explicitly overruled, the IEC has not relied on PS 08-02 except in very specific and limited circumstances.  
(Advisory Opinion 10-02, Complaint 11-02)

# Travel Issues: Government Exchange Organizations

- If the organization paying for the trip is an organization to which the state pays dues (NGA, WGA, NCSL, ALEC, NCSG etc.) then the Commission has stated that there is lawful consideration for the trip, and acceptance is permissible even if the organization gets more than 5% of its funding from for profit sources. (Position Statement 10-01)  
See also C.R.S. §2-3-311(2)(d)(I) and (II)

# Gift Ban, cont.

- Section 4: Lobbyists

Public officials and employees covered under Article XXIX cannot accept any gift of any value from a registered professional lobbyist. (unless an “immediate” family member)

- This includes in a social situation.
- See, Position Statement 09-01, and Letter Rulings 09-01 and 09-02.

# Post Employment Restrictions

- C.R.S. § 24-18-201: “A former employee may not, within 6 months ...contract or be employed by an employer who contracts with a state agency or local government involving matters with which he was directly involved during his employment.”
- See also, C.R.S. § 24-18-108(2).  
(proscribed activities during employment)

# Article XXIX section 4

- “No statewide elected official or member of the General Assembly may personally represent another person or entity before any other statewide elected officeholder or member of the General Assembly for a period of two years following vacation of office.”

See also Position Statement 09-02

## **Other issues:**

- Acceptance of Prizes or Awards (Advisory Opinions 09-07, 10-01, but see, 11-09)
- Acceptance of Fellowships ( Advisory Opinions 09-05, 09-08)
- No waivers

# Complaint Process

- Anyone may file a complaint
- Complaint is confidential until the Commission makes a decision regarding whether it is “frivolous”
- If not frivolous, the subject of the complaint is asked to respond
- Commission staff investigates
- Commission may schedule for a hearing

# Penalties

- Section 6:

The Commission may impose a penalty of up to double the value of the gift that is received.

- Unclear what penalties the Commission may impose in a non-gift ban case.



# Process for Requesting Advisory Opinions

- Send a letter and/or email to the Executive Director
- Timing of Requests
- Confidentiality Issues
- Distribution List