

[REDACTED] - [REDACTED] Aug 27 (8 days ago)

to me

Hello Maureen,

Through this email I would like to formally ask to be added to the September 8 agenda for the Colorado Independent Ethics Commission to consider my attached request for a Letter Ruling.

In the attachment please find the following:

- My request for a Letter Ruling, in which I provide my personal background relevant to this ruling, and provide a discussion concerning the relevant issues for this ruling;
- My email to the relevant executive management in the Colorado Department of Human Services (CDHS), in which I request an email or letter from CDHS concerning their position on my employment with current contractors to my division, and during the six months following the end of my employment with CDHS;
- My email correspondence from January 2014 with CDHS and [REDACTED], and an email (unofficial) opinion from the Office of the Attorney General concerning a comparable situation.

I am hopeful that per my request CDHS will provide the requested email or letter prior to the September 8 hearing. What happens if they refuse to reply? Can the IEC request a statement of position from them?

Please let me know if I need to provide anything else for this request. Thanks for your assistance.

Best Wishes,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

P: [REDACTED]

[REDACTED] Colorado [REDACTED]

[REDACTED] | [REDACTED]

[REDACTED]  
Request for Letter Ruling  
From the Colorado Independent Ethics Commission  
September 8, 2014

**REQUEST:**

A Letter Ruling is requested from the Colorado Independent Ethics Commission (IEC or Commission) concerning any potential violation of Article XXIX of the Colorado Constitution or any other standard of conduct under the jurisdiction of the IEC for the requestor to obtain either employment or a contract within six months of leaving state government employment with an organization that had and continues to have contracts with the division of state government that the requestor managed.

**JURISDICTION:**

The requestor acknowledges that he was a "government employee" subject to the Commission's jurisdiction, and subject to the provisions of Article XXIX of the Colorado Constitution and C.R.S. section 24-18-201.

**BACKGROUND:**

The requestor was an employee of the Colorado Department of Human Services (CDHS) until August 29, 2014, [REDACTED]

[REDACTED] Prior to leaving this position and state government employment, the requestor did not seek and was not offered any subsequent employment with any organization that contracted to provide services to Colorado state government.

In this position, the requestor's duties included: the coordination of public and private

[REDACTED]

The requestor resigned from his position because of differences in opinion with management. This was a principled resignation initiated by the requestor and was not in lieu of termination. The work of the division is continuing in an environment of federal fiscal challenges, and opportunities to re-imagine the role of the state [REDACTED]  
[REDACTED]

Upon leaving state government employment, the requestor wishes to know that he will not be in violation of law in pursuing the possibility of obtaining employment or a contract with any of the organizations that had or continues to have contracts [REDACTED]

[REDACTED] The requestor wishes to pursue these specific opportunities within six months of leaving state government, as employment obtained after six months of leaving state government is not under the control of the state constitution or state statute, or under the jurisdiction of the IEC.

[REDACTED] Refugee services is a highly specialized field with very few organizations providing services for refugees as their primary business. There are only about a dozen organizations in Colorado, all in the Denver metro area, that provide such specialized refugee services [REDACTED]. These organizations are part of a tightly knit network that maximizes the leveraging of resources through the strategic development and sharing of those resources. Frequently, a position or program created by one organization in this network is available to benefit all organizations and clients of the network. Because this network of organizations providing refugee services is so limited and local in Colorado, the requestor believes that it would be unduly punitive to force him to seek subsequent employment outside of his field of expertise and outside of Colorado during the six months after his leaving state government employment.

All of the information that the requestor has access to and would utilize in subsequent employment is publically available through multiple channels. [REDACTED]

[REDACTED]. What the requestor would bring to subsequent employment is not so much information that is available to many, but rather expertise in analyzing and applying that information that is unique to him. The question asked by the requestor is whether the intention of the relevant statutes is to interrupt the application of expertise to service delivery, when none of that expertise is dependent upon privileged information.

Upon leaving his position, there were many projects underway [REDACTED]

[REDACTED]

The requestor would like to work as a part-time employee, or contract as a consultant, with one of several organizations in this network, to work on these and other projects on behalf of the entire network.

## DISCUSSION:

At the core of this request are the restrictions in C.R.S. section 24-18-201(1), which states in pertinent part:

Members of the general assembly, public officers, local government officials, or employees shall not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within six months following the termination of his employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment.

[REDACTED]. Consequently, it would be virtually impossible to identify and segregate duties in a new position or contract with one of these organizations that do not in some aspect overlap with "matters with which he was directly involved during his employment" with state government.

While the IEC previously has not provided any definition or clarification specific to "directly involved," it has repeatedly emphasized that the totality of the circumstances should be considered. In Position Statement No. 09-03, the IEC discussed two factors that should be the focus in analyzing the totality of the circumstances, and that are relevant to a decision for this requestor.

*1. Whether the remuneration that is being offered to the public official or employee is appropriate or patently excessive.*

Prior to leaving state government, and prior to a decision by the IEC, the requestor has not sought and has not received a specific offer of employment or contracting, and thus a specific remuneration amount is not available for consideration by the IEC. However, because the requestor would be seeking employment or a contract with a refugee services organization that contracts with the state, any remuneration that the requestor would receive would be subject to review by the state ([REDACTED]) as part of its normal contract review process, and thus any remuneration that is patently excessive could be rejected from the contract and prevented, and thus satisfy this requirement.

*2. Whether the offer or solicitation is made in circumstances indicative of a conflict of interest.*

This prohibition against conflict of interest is to ensure that no direct official action is taken by the state employee (in this case, the requestor) in anticipation or expectation of employment by a prospective employer that "contracts with a state agency or any local government involving matters with which he was directly involved during his

employment." The kind of matters in which direct involvement is prohibited are clarified in C.R.S section 24-18-105(3), which states:

These matters include rules, other than rules of general application, which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

Since the requestor will not seek subsequent employment until after his ability to take direct official action has ended, an independent reviewer would have to determine if the actual new employer or contractor for the requestor had benefitted or been rewarded inappropriately through direct official actions taken by the requestor while he was a state employee. However, none of these types of matters mentioned above pertain to the duties performed by the requestor during any time of his tenure as a state employee, and thus conflict of interest should not be a factor in his pursuit of subsequent employment.

Moreover, as an additional safeguard, any subsequent employment opportunities that are being requested would be subject to review. As is the situation concerning remuneration, the duties of the requestor in any new employment or contracting situation [REDACTED] contracting with the state would be subject to review by the state (specifically, the requestor's [REDACTED]) as part of its normal contract review process, and thus any actual conflicts of interest could be rejected from the contract and prevented, and thus satisfy this requirement.

Beyond reviewing these two factors, the IEC gives considerable deference to the position of the current or former state agency involved concerning the future employment of their current or former employees. The IEC previously has considered similar requests (Advisory Opinion 13-13, Advisory Opinion 10-08, and Letter Ruling 10-02), and has adopted the standard of review stated in Letter Ruling 10-02, pages 4-5:

In general, absent clear facts to the contrary, the Commission is inclined to rely on the position of the state agency involved, given their superior understanding of the duties performed by the state employee involved.

Consequently, the requestor has asked the Colorado Department of Human Services to provide a letter to the IEC stating its position regarding his future employment, and to provide specific examples related to the two factors above for any objections they might raise.



STATE OF COLORADO

Toomey, Maureen <maureen.toomey@state.co.us>

Contact person

2 messages

Toomey, Maureen <maureen.toomey@state.co.us>

Wed, Sep 10, 2014 at 9:14 AM

To: [redacted]

Hi [redacted]

Who should I contact [redacted] to ask for a non conflict of interest letter?

Thanks for your patience on Monday. The executive session was not supposed to be that long and I apologize for giving you a time that was far too early.

Maureen Toomey  
Assistant Director  
Independent Ethics Commission  
maureen.toomey@state.co.us  
720-625-5694

[redacted]

Wed, Sep 10, 2014 at 2:08 PM

To: "Toomey, Maureen" <maureen.toomey@state.co.us>

Hello Maureen,

No problem about the delay. I always have something to work on when waiting.

Who to contact is a good question. As I read past decisions, the Commission refers to positions letters from the Departments (HCPF, DOR) rather than from separate offices and divisions within the Departments.

So, I would probably send the letter to [redacted]

So that we can resolve my request hopefully at the October meeting, could I make a request. I truly do not know what the position of [redacted] will be. But, could the Commission letter to [redacted] emphasize that if the position of [redacted] is that they have no objections to my working during the six months after my state employment, then the [redacted] letter does not need to be detailed. However, if the position of [redacted] is that they have objections, then would [redacted] please provide specific examples of where they perceive the conflict of interest that causes them to object. I just do not think it is fair for a Department to be able to claim a conflict of interest without having to justify their position. Thanks.

Best Wishes,

[redacted]

Best Wishes,

[redacted]

[redacted]

[Redacted text]

[Quoted text hidden]