

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Intermountain Rural Electric Association and Andy McElhany,
Complainants,

v.

Ron Binz,
Respondent.

On November 18, 2011, the Independent Ethics Commission ("IEC" or "Commission") (Commissioners Grossman and Smith recused) heard testimony and received other evidence regarding Complaint Nos. 10-12 and 11-02 at a hearing, as required by Colorado Constitution Article XXIX, sec. 5(3)(c). Based on the Commission's investigation and the evidence received at the hearing, the Commission finds as follows.

Findings of Fact

1. In January, 2007, Ron Binz was appointed the chairman of the Public Utilities Commission ("PUC") by Governor Bill Ritter, Jr.
2. On May 13, 2010, Mr. Binz was invited by Porter Bennett, the President of BENTEK Energy, L.L.C. ("Bentek"), to speak at the "Benposium", a conference in Houston, Texas, sponsored by Bentek.
3. Mr. Binz was asked to speak on volatility in the natural gas market, from the regulator's perspective, and what the State of Colorado had done to mitigate its effects.
4. Mr. Binz was invited because the industry was interested in finding ways to increase gas demand and why long term contracts were not an adequate risk management tool.

5. Bentek is a for-profit energy analytics company which provides market analysis to many of the major energy companies as well as financial institutions and energy regulators. Bentek is headquartered in Evergreen, Colorado.
6. Bentek is not regulated by the PUC, although many of its clients are regulated entities. Bentek does not lobby or advocate for a specific position. Its function is primarily educational.
7. Participants at the Benposium included representatives from the natural gas industry as well as federal and state officials involved in energy issues.
8. Mr. Binz's travel expenses, including airfare, lodging and incidental expenses totaled \$1073.70.
9. Bentek paid the travel expenses for Mr. Binz.
10. Bentek also paid the travel expenses for most of the speakers at the Benposium.
11. On May 17, 2010, prior to travelling to Houston, Texas, Mr. Binz filled out a form generally used in the Department of Regulatory Agencies and received supervisory approval for the travel.
12. Mr. Binz was in Houston for less than 21 hours, and stayed in the same hotel as the other participants in the conference.
13. Mr. Binz did not request an Advisory Opinion from the Commission, as suggested by Position Statement 08-02 (Travel).
14. On April 22, 2010, prior to Mr. Binz's travel request, the Commission issued Advisory Opinion 10-06 (Travel paid for by a For Profit Entity), in which it concluded that accepting travel reimbursement from a for profit company to appear at a conference constituted a violation of Article XXIX.
15. Mr. Binz viewed this trip as part of his job and believed that the trip was permissible under Article XXIX and the Commission's opinions.
16. The parties agreed that the Commission's current rules of procedure apply to this proceeding.

Conclusions of Law

1. Mr. Binz was a "government employee" as defined by Article XXIX, section 2(1) and was subject to the Commission's jurisdiction at the time of the events in question.
2. Mr. Binz accepted a gift of travel in excess of \$50.
3. Mr. Binz did not provide lawful consideration of equal or greater value for the travel expenses.
4. None of the enumerated exceptions in Article XXIX, section 3(3) apply to this trip, because Bentek is not a state or local government or a nonprofit which gets less than 5% of its funding from for profit sources.
5. Position Statement 08-02 states that as with all position statements, it is intended to provide broad advice only and that individuals with particular requests should seek advisory opinions. Issuance of Advisory Opinion 10-06 should have suggested to Mr. Binz that a request for an advisory opinion was warranted.
6. The Rules of the IEC provide that reliance on an Advisory Opinion constitutes an affirmative defense, Rule 5(H), but make no mention of reliance on a Position Statement.
7. Even assuming Position Statement 08-02 applies, there is not sufficient evidence showing that Mr. Binz's travel was for a legitimate state or local purpose.
8. Mr. Binz did not breach the public trust for private gain because Mr. Binz did not personally benefit from the travel paid for by Bentek.

Wherefore, the Commission finds that there was a violation of Article XXIX by Ron Binz, but no penalty is warranted.

The Independent Ethics Commission

Sally H. Hopper, *vice chair*
Dorothy Butcher, *Commissioner*
Bill Pinkham, *Commissioner*
(Commissioners Grossman and Smith were recused)

December 7, 2011

CERTIFICATE OF MAILING

This is to certify that on the 8th day of December, 2011, I emailed and placed true copies of the foregoing **FINAL ORDER** in the United States mail, postage prepaid, and addressed as follows:

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