

BEFORE THE INDEPENDENT ETHICS COMMISSION
STATE OF COLORADO

Complaint No. 17-28

ORDER

IN THE MATTER OF JULIE COZAD,
Respondent

This matter comes before the Independent Ethics Commission (“Commission”) on a complaint filed by Ellen DeLorenzo (“Complainant”) alleging violations of the gift ban provisions of Section 3 of Article XXIX of the Colorado Constitution (“gift ban”). Complainant alleges that Weld County Commissioner Julie Cozad (“Commissioner Cozad”) violated the gift ban by attending the Northern Colorado Medical Center Foundation Gala as a guest of Noble Energy. Before deciding the merits of the Complaint, the Commission asked the parties and interested amici curiae to brief the issue of whether the Commission has jurisdiction over Commissioner Cozad, given that Weld County is organized as a home rule county under Article XIV, § 16 of the Colorado Constitution.

The Commission finds that it has jurisdiction over Commissioner Cozad. The Weld County Code in place at the time of the events in question did not “address the matters” contained in Article XXIX. *See Colo. Const. art. XXIX, § 7.* When the Weld County Code is place alongside Article XXIX, it is immediately clear that the code does not address a core component of Article XXIX, specifically, the gift ban.¹ In this regard, Weld County Code’s purported gift ban component is woefully inadequate and tantamount to no gift ban at all. It prohibits only the acceptance of “bribes, money, property or services of value *in the course of employment.*” Weld County Code § 3-3-10.A.10 (emphasis added). This limited prohibition does not apply to all things of value, does not apply outside the “course of employment” (the scope of which is undefined), and does not apply to one’s child or spouse. *Id.* For example, a

¹ The parties’ briefs extensively address Position Statement 16-01 and its applicability. Position Statement 16-01 provides guidance and notice, *see* Position Statement 08-01, but it is Article XXIX that provides the substantive standards against which Weld County’s Code must be measured.

child or spouse of a public official could accept an unlimited amount of money from a lobbyist or contractor, without limitation, without violating the Weld County Code. Such a provision does not address central and core matters covered by Article XXIX. *See Colo. Const. art. XXIX, §§ 3(2), 7.*

Although the Weld County Code mentions Article XXIX and attempts to characterize Section 3-3-10.A.10 as a gift ban, it falls far short of prohibiting the kind of conduct Article XXIX is aimed at—efforts “to realize personal financial gain through public office other than compensation provided by law”. *Compare Colo. Const. art. XXIX, § 1(d) with Weld County Code § 2-2-150.* Moreover, it does not contain “a penalty mechanism to enforce those standards”, particularly as to elected officials. *Compare Colo. Const. art. XXIX, § 1(e) with Weld County Code §§ 3-1-30.A, 3-3-10.A.10.* Therefore, the Weld County Code does not “address the matters” contained in Article XXIX.² Colo. Const. art. XXIX, § 7.

The case relied on by Commissioner Cozad and supporting *amici*, *In re Complaint Filed by City of Colorado Springs*, 277 P.3d 937 (Colo. App. 2012), does not compel a different result. In that case, the court found a home rule municipality’s (Colorado Springs) code to “address the matters” covered by the state Fair Campaign Practices Act (“FCPA”) and Articles XX and XVIII of the Colorado Constitution. Article XX grants home rule municipalities the power to legislate election matters, and the FCPA provides that neither its provisions nor Article XXVIII, which governs campaign finance, applies to home rule municipalities that adopt laws “address[ing] the matters” covered thereby. § 1-45-116, C.R.S. The Colorado Springs ordinance at issue addressed disclosure of election campaign expenditures and contributions, provided for a method of filing the reports required by the FCPA, and expressly incorporated several FCPA provisions. *Colorado Springs*, 277 P.3d at 940. Thus, the Court of Appeals found that the ordinance addressed the matters in Article XVIII and the FCPA.

Although it is not clear from the opinion, the court also relied at least in part on a Secretary of State rule exempting home rule municipalities that adopted laws “address[ing] any of the matters covered by Article XXVII or the FCPA.” *Colorado Springs*, 277 P.3d at 940-41 (emphasis in original). Further, the court relied on an Attorney General’s Opinion concluding

² The Commission rejects the contention by Commissioner Cozad and supporting *amici* that, if a home rule county purports to address ethics matters, the Commission lacks jurisdiction to consider whether that county’s code complies with Section 7 of Article XXIX.

that Articles XX and XXVIII could be harmonized only by construing Article XXVIII as applying only to cities that do not exercise home rule authority. *Id.* at 941. That opinion is focused on home rule entities that enact laws governing local election matters, undisputedly a matter of local concern pursuant to Article XX. Op. Colo. Att'y Gen. 03-1 at 1-4 (Jan. 13, 2003). Specifically, the Attorney General's Opinion concluded that home rule entities may either comply with state law or otherwise "provide[] a rule by charter or ordinance" and "substitute their own rules in every one of these areas" (*i.e.*, qualifications, provisions for appointment, compensation, etc.). *Id.* at 4, 7. We are not compelled to apply a different approach here.

Additionally, the court in *Colorado Springs* deferred to the Attorney General's Opinion's reliance on the fact that Article XX designates local elections as a matter of local concern. 277 P.3d at 941. Holding public officials to certain ethical standards, on the other hand, is clearly a matter of statewide concern. Article XXIX provides that public officials must be held to "specific standards" in order to "hold the respect and confidence of the people". Colo. Const. art. XXIX, § 1(1)(a), (e). The state has a particular interest in uniformity of regulation regarding those standards, and the extraterritorial impact of public officials who are not held to ethics standards is significant, as it undermines the public trust statewide. *See City and County of Denver v. State*, 788 P.2d 764, 768-69 (Colo. 1990) (setting forth principles to consider to determine whether an issue is of state, local, or mixed concern). Therefore, the Commission's decision does not conflict with *Colorado Springs*.

The Commission does not address other sections of the Weld County Code that may be non-compliant with Article XXIX. It is sufficient for our purposes that the Weld County Code does not address a core component of Article XXIX.

THEREFORE, the Commission finds that it has jurisdiction over Commissioner Cozad. Further proceedings will be scheduled by oral order.

The Independent Ethics Commission

Matt Smith, *Chair*

April Jones, *Vice Chair*

Jo Ann Sorensen, *Commissioner*

Gary Reiff, *Commissioner*

DATED: February 12, 2018

Commissioner William Leone recused himself from consideration of this case and did not participate in this decision.