

Final Text #118
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ELECTIONS/LICENSING
SECRETARY OF STATE

Be it enacted by the People of the State of Colorado:

The constitution of the state of Colorado is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE XXIX
Ethics in Government

Section 1. Purposes and findings. (1) THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND AND DECLARE THAT:

(a) THE CONDUCT OF PUBLIC OFFICERS, MEMBERS OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIALS, AND GOVERNMENT EMPLOYEES MUST HOLD THE RESPECT AND CONFIDENCE OF THE PEOPLE;

(b) THEY SHALL CARRY OUT THEIR DUTIES FOR THE BENEFIT OF THE PEOPLE OF THE STATE;

(c) THEY SHALL, THEREFORE, AVOID CONDUCT THAT IS IN VIOLATION OF THEIR PUBLIC TRUST OR THAT CREATES A JUSTIFIABLE IMPRESSION AMONG MEMBERS OF THE PUBLIC THAT SUCH TRUST IS BEING VIOLATED;

(d) ANY EFFORT TO REALIZE PERSONAL FINANCIAL GAIN THROUGH PUBLIC OFFICE OTHER THAN COMPENSATION PROVIDED BY LAW IS A VIOLATION OF THAT TRUST; AND

(e) TO ENSURE PROPRIETY AND TO PRESERVE PUBLIC CONFIDENCE, THEY MUST HAVE THE BENEFIT OF SPECIFIC STANDARDS TO GUIDE THEIR CONDUCT, AND OF A PENALTY MECHANISM TO ENFORCE THOSE STANDARDS.

(2) THE PEOPLE OF THE STATE OF COLORADO ALSO FIND AND DECLARE THAT THERE ARE CERTAIN COSTS ASSOCIATED WITH HOLDING PUBLIC OFFICE AND THAT TO ENSURE THE INTEGRITY OF THE OFFICE, SUCH COSTS OF A REASONABLE AND NECESSARY NATURE SHOULD BE BORN BY THE STATE OR LOCAL GOVERNMENT.

Section 2. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "GOVERNMENT EMPLOYEE" MEANS ANY EMPLOYEE, INCLUDING INDEPENDENT CONTRACTORS, OF THE STATE EXECUTIVE BRANCH, THE STATE LEGISLATIVE BRANCH, A STATE AGENCY, A PUBLIC INSTITUTION OF HIGHER EDUCATION, OR ANY LOCAL GOVERNMENT, EXCEPT A MEMBER OF THE GENERAL ASSEMBLY OR A PUBLIC OFFICER.

(2) "LOCAL GOVERNMENT" MEANS COUNTY OR MUNICIPALITY.

(3) "LOCAL GOVERNMENT OFFICIAL" MEANS AN ELECTED OR APPOINTED OFFICIAL OF A LOCAL GOVERNMENT BUT DOES NOT INCLUDE AN EMPLOYEE OF A LOCAL GOVERNMENT.

(4) "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE, TRUST, LIMITED LIABILITY COMPANY, PARTNERSHIP, LABOR ORGANIZATION, ASSOCIATION, POLITICAL PARTY, COMMITTEE, OR OTHER LEGAL ENTITY.

(5) "PROFESSIONAL LOBBYIST" MEANS ANY INDIVIDUAL WHO ENGAGES HIMSELF OR HERSELF OR IS ENGAGED BY ANY OTHER PERSON FOR PAY OR FOR ANY CONSIDERATION FOR LOBBYING. "PROFESSIONAL LOBBYIST" DOES NOT INCLUDE ANY VOLUNTEER LOBBYIST, ANY STATE OFFICIAL OR EMPLOYEE ACTING IN HIS OR HER OFFICIAL CAPACITY, EXCEPT THOSE DESIGNATED AS LOBBYISTS AS PROVIDED BY LAW, ANY ELECTED PUBLIC OFFICIAL ACTING IN HIS OR HER OFFICIAL CAPACITY, OR ANY INDIVIDUAL WHO APPEARS AS COUNSEL OR ADVISOR IN AN ADJUDICATORY PROCEEDING.

(6) "PUBLIC OFFICER" MEANS ANY ELECTED OFFICER, INCLUDING ALL STATEWIDE ELECTED OFFICEHOLDERS, THE HEAD OF ANY DEPARTMENT OF THE EXECUTIVE BRANCH, AND ELECTED AND APPOINTED MEMBERS OF STATE BOARDS AND COMMISSIONS. "PUBLIC OFFICER" DOES NOT INCLUDE A MEMBER OF THE GENERAL ASSEMBLY, A MEMBER OF THE JUDICIARY, ANY LOCAL GOVERNMENT OFFICIAL, OR ANY MEMBER OF A BOARD, COMMISSION, COUNCIL OR COMMITTEE WHO RECEIVES NO COMPENSATION OTHER THAN A PER DIEM ALLOWANCE OR NECESSARY AND REASONABLE EXPENSES.

Section 3. Gift ban. (1) NO PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE SHALL ACCEPT OR RECEIVE ANY MONEY, FORBEARANCE, OR FORGIVENESS OF INDEBTEDNESS FROM ANY PERSON, WITHOUT SUCH PERSON RECEIVING LAWFUL CONSIDERATION OF EQUAL OR GREATER VALUE IN RETURN FROM THE PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE WHO ACCEPTED OR RECEIVED THE MONEY, FORBEARANCE OR FORGIVENESS OF INDEBTEDNESS.

(2) NO PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE, EITHER DIRECTLY OR INDIRECTLY AS THE BENEFICIARY OF A GIFT OR THING OF VALUE GIVEN TO SUCH PERSON'S SPOUSE OR DEPENDENT CHILD, SHALL SOLICIT, ACCEPT OR RECEIVE ANY GIFT OR OTHER THING OF VALUE HAVING EITHER A FAIR MARKET VALUE OR AGGREGATE ACTUAL COST GREATER THAN FIFTY DOLLARS (\$50) IN ANY CALENDAR YEAR, INCLUDING BUT NOT LIMITED TO, GIFTS, LOANS, REWARDS, PROMISES OR NEGOTIATIONS OF FUTURE EMPLOYMENT, FAVORS OR SERVICES, HONORARIA, TRAVEL, ENTERTAINMENT, OR SPECIAL DISCOUNTS, FROM A PERSON, WITHOUT THE PERSON RECEIVING LAWFUL CONSIDERATION OF EQUAL OR GREATER VALUE IN RETURN FROM THE PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE WHO SOLICITED, ACCEPTED OR RECEIVED THE GIFT OR OTHER THING OF VALUE.

(3) THE PROHIBITIONS IN SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY IF THE GIFT OR THING OF VALUE IS:

- (a) A CAMPAIGN CONTRIBUTION AS DEFINED BY LAW;
- (b) AN UNSOLICITED ITEM OF TRIVIAL VALUE LESS THAN FIFTY DOLLARS (\$50), SUCH AS A PEN, CALENDAR, PLANT, BOOK, NOTE PAD OR OTHER SIMILAR ITEM;
- (c) AN UNSOLICITED TOKEN OR AWARD OF APPRECIATION IN THE FORM OF A PLAQUE, TROPHY, DESK ITEM, WALL MEMENTO, OR SIMILAR ITEM;

- (d) UNSOLICITED INFORMATIONAL MATERIAL, PUBLICATIONS, OR SUBSCRIPTIONS RELATED TO THE RECIPIENT'S PERFORMANCE OF OFFICIAL DUTIES;
- (e) ADMISSION TO, AND THE COST OF FOOD OR 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 A SCHEDULED PROGRAM;
- (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 NON-PROFIT ORGANIZATION RECEIVES LESS THAN FIVE PERCENT (5%) OF ITS FUNDING FROM FOR-PROFIT ORGANIZATIONS OR ENTITIES;
- (g) GIVEN BY AN INDIVIDUAL WHO IS A RELATIVE OR PERSONAL FRIEND OF THE RECIPIENT ON A SPECIAL OCCASION.
- (h) A COMPONENT OF THE COMPENSATION PAID OR OTHER INCENTIVE GIVEN TO THE RECIPIENT IN THE NORMAL COURSE OF EMPLOYMENT.

(4) NOTWITHSTANDING ANY PROVISIONS OF THIS SECTION TO THE CONTRARY, AND EXCEPTING CAMPAIGN CONTRIBUTIONS AS DEFINED BY LAW, NO PROFESSIONAL LOBBYIST, PERSONALLY OR ON BEHALF OF ANY OTHER PERSON OR ENTITY, SHALL KNOWINGLY OFFER, GIVE, OR ARRANGE TO GIVE, TO ANY PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE, OR TO A MEMBER OF SUCH PERSON'S IMMEDIATE FAMILY, ANY GIFT OR THING OF VALUE, OF ANY KIND OR NATURE, NOR KNOWINGLY PAY FOR ANY MEAL, BEVERAGE, OR OTHER ITEM TO BE CONSUMED BY SUCH PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL OR GOVERNMENT EMPLOYEE, WHETHER OR NOT SUCH GIFT OR MEAL, BEVERAGE OR OTHER ITEM TO BE CONSUMED IS OFFERED, GIVEN OR PAID FOR IN THE COURSE OF SUCH LOBBYIST'S BUSINESS OR IN CONNECTION WITH A PERSONAL OR SOCIAL EVENT; PROVIDED, HOWEVER, THAT A PROFESSIONAL LOBBYIST SHALL NOT BE PROHIBITED FROM OFFERING OR GIVING TO A PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL OR GOVERNMENT EMPLOYEE WHO IS A MEMBER OF HIS OR HER IMMEDIATE FAMILY ANY SUCH GIFT, THING OF VALUE, MEAL, BEVERAGE OR OTHER ITEM.

(5) THE GENERAL ASSEMBLY SHALL MAKE ANY CONFORMING AMENDMENTS TO THE REPORTING AND DISCLOSURE REQUIREMENTS FOR PUBLIC OFFICERS, MEMBERS OF THE GENERAL ASSEMBLY AND PROFESSIONAL LOBBYISTS, AS PROVIDED BY LAW, TO COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS SECTION.

(6) THE FIFTY-DOLLAR (\$50) LIMIT SET FORTH IN SUBSECTION (2) OF THIS SECTION SHALL BE ADJUSTED BY AN AMOUNT BASED UPON THE PERCENTAGE CHANGE OVER A FOUR-YEAR PERIOD IN THE UNITED STATES BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER- BOULDER-GREELEY, ALL ITEMS, ALL CONSUMERS, OR ITS SUCCESSOR INDEX, ROUNDED TO THE NEAREST LOWEST DOLLAR. THE FIRST ADJUSTMENT SHALL BE DONE IN THE FIRST QUARTER OF 2011 AND THEN EVERY FOUR YEARS THEREAFTER.

Section 4. Restrictions on representation after leaving office. NO STATEWIDE ELECTED OFFICEHOLDER OR MEMBER OF THE GENERAL ASSEMBLY SHALL PERSONALLY REPRESENT ANOTHER PERSON OR ENTITY FOR COMPENSATION BEFORE ANY OTHER STATEWIDE ELECTED OFFICEHOLDER OR MEMBER OF THE GENERAL ASSEMBLY, FOR A PERIOD OF TWO YEARS FOLLOWING VACATION OF OFFICE. FURTHER RESTRICTIONS ON PUBLIC OFFICERS OR MEMBERS OF THE GENERAL ASSEMBLY AND SIMILAR RESTRICTIONS ON OTHER PUBLIC OFFICERS, LOCAL GOVERNMENT OFFICIALS OR GOVERNMENT EMPLOYEES MAY BE ESTABLISHED BY LAW.

Section 5. Independent ethics commission. (1) THERE IS HEREBY CREATED AN INDEPENDENT ETHICS COMMISSION TO BE COMPOSED OF FIVE MEMBERS. THE PURPOSE OF THE INDEPENDENT ETHICS COMMISSION SHALL BE TO HEAR COMPLAINTS, ISSUE FINDINGS, AND ASSESS PENALTIES, AND ALSO TO ISSUE ADVISORY OPINIONS, ON ETHICS ISSUES ARISING UNDER THIS ARTICLE AND UNDER ANY OTHER STANDARDS OF CONDUCT AND REPORTING REQUIREMENTS AS PROVIDED BY LAW. THE INDEPENDENT ETHICS COMMISSION SHALL HAVE AUTHORITY TO ADOPT SUCH REASONABLE RULES AS MAY BE NECESSARY FOR THE PURPOSE OF ADMINISTERING AND ENFORCING THE PROVISIONS OF THIS ARTICLE AND ANY OTHER STANDARDS OF CONDUCT AND REPORTING REQUIREMENTS AS PROVIDED BY LAW. THE GENERAL ASSEMBLY SHALL APPROPRIATE REASONABLE AND NECESSARY FUNDS TO COVER STAFF AND ADMINISTRATIVE EXPENSES TO ALLOW THE INDEPENDENT ETHICS COMMISSION TO CARRY OUT ITS DUTIES PURSUANT TO THIS ARTICLE. MEMBERS OF THE COMMISSION SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES ON THE COMMISSION.

(2) (a) MEMBERS OF THE INDEPENDENT ETHICS COMMISSION SHALL BE APPOINTED IN THE FOLLOWING MANNER AND ORDER:

(I) ONE MEMBER SHALL BE APPOINTED BY THE COLORADO SENATE;

(II) ONE MEMBER SHALL BE APPOINTED BY THE COLORADO HOUSE OF REPRESENTATIVES;

(III) ONE MEMBER SHALL BE APPOINTED BY THE GOVERNOR OF THE STATE OF COLORADO;

(IV) ONE MEMBER SHALL BE APPOINTED BY THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT; AND

(V) ONE MEMBER SHALL BE EITHER A LOCAL GOVERNMENT OFFICIAL OR A LOCAL GOVERNMENT EMPLOYEE APPOINTED BY THE AFFIRMATIVE VOTE OF AT LEAST THREE OF THE FOUR MEMBERS APPOINTED PURSUANT TO SUBPARAGRAPHS (I) TO (IV) OF THIS PARAGRAPH (a).

(b) NO MORE THAN TWO MEMBERS SHALL BE AFFILIATED WITH THE SAME POLITICAL PARTY.

(c) EACH OF THE FIVE MEMBERS SHALL BE REGISTERED COLORADO VOTERS AND SHALL HAVE BEEN CONTINUOUSLY REGISTERED WITH THE SAME POLITICAL PARTY, OR CONTINUOUSLY UNAFFILIATED WITH ANY POLITICAL PARTY, FOR AT LEAST TWO YEARS PRIOR TO APPOINTMENT TO THE COMMISSION.

(d) MEMBERS OF THE INDEPENDENT ETHICS COMMISSION SHALL BE APPOINTED TO TERMS OF FOUR YEARS; EXCEPT THAT, THE FIRST MEMBER APPOINTED BY THE COLORADO SENATE AND THE FIRST MEMBER APPOINTED BY THE GOVERNOR OF THE STATE OF COLORADO SHALL INITIALLY SERVE TWO YEAR TERMS TO ACHIEVE STAGGERED ENDING DATES.

(e) IF A MEMBER IS APPOINTED TO FILL AN UNEXPIRED TERM, THAT MEMBER'S TERM SHALL END AT THE SAME TIME AS THE TERM OF THE PERSON BEING REPLACED.

(f) EACH MEMBER SHALL CONTINUE TO SERVE UNTIL A SUCCESSOR HAS BEEN APPOINTED, EXCEPT THAT IF A MEMBER IS UNABLE OR UNWILLING TO CONTINUE TO SERVE UNTIL A SUCCESSOR HAS BEEN APPOINTED, THE ORIGINAL APPOINTING AUTHORITY AS DESCRIBED IN THIS SUBSECTION SHALL FILL THE VACANCY PROMPTLY.

(3) (a) ANY PERSON MAY FILE A WRITTEN COMPLAINT WITH THE INDEPENDENT ETHICS COMMISSION ASKING WHETHER A PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE HAS FAILED TO COMPLY WITH THIS ARTICLE OR ANY OTHER STANDARDS OF CONDUCT OR REPORTING REQUIREMENTS AS PROVIDED BY LAW WITHIN THE PRECEDING TWELVE MONTHS.

(b) THE COMMISSION MAY DISMISS FRIVOLOUS COMPLAINTS WITHOUT CONDUCTING A PUBLIC HEARING. COMPLAINTS DISMISSED AS FRIVOLOUS SHALL BE MAINTAINED CONFIDENTIAL BY THE COMMISSION.

(c) THE COMMISSION SHALL CONDUCT AN INVESTIGATION, HOLD A PUBLIC HEARING, AND RENDER FINDINGS ON EACH NON-FRIVOLOUS COMPLAINT PURSUANT TO WRITTEN RULES ADOPTED BY THE COMMISSION.

(d) THE COMMISSION MAY ASSESS PENALTIES FOR VIOLATIONS AS PRESCRIBED BY THIS ARTICLE AND PROVIDED BY LAW.

(e) THERE IS HEREBY ESTABLISHED A PRESUMPTION THAT THE FINDINGS SHALL BE BASED ON A PREPONDERANCE OF EVIDENCE UNLESS THE COMMISSION DETERMINS THAT THE CIRCUMSTANCES WARRANT A HEIGHTENED STANDARD.

(4) MEMBERS OF THE INDEPENDENT ETHICS COMMISSION SHALL HAVE THE POWER TO SUBPOENA DOCUMENTS AND TO SUBPOENA WITNESSES TO MAKE STATEMENTS AND PRODUCE DOCUMENTS.

(5) ANY PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE MAY SUBMIT A WRITTEN REQUEST TO THE INDEPENDENT ETHICS COMMISSION FOR AN ADVISORY OPINION ON WHETHER ANY CONDUCT BY THAT PERSON WOULD CONSTITUTE A VIOLATION OF THIS ARTICLE, OR ANY OTHER STANDARDS OF CONDUCT OR REPORTING REQUIREMENTS AS PROVIDED BY LAW. THE COMMISSION SHALL RENDER AN ADVISORY OPINION PURSUANT TO WRITTEN RULES ADOPTED BY THE COMMISSION.

Section 6. Penalty. ANY PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL OR GOVERNMENT EMPLOYEE WHO BREACHES THE PUBLIC TRUST FOR PRIVATE GAIN AND ANY PERSON OR ENTITY INDUCING SUCH BREACH SHALL BE LIABLE TO THE STATE OR LOCAL JURISDICTION FOR DOUBLE THE AMOUNT OF THE

FINANCIAL EQUIVALENT OF ANY BENEFITS OBTAINED BY SUCH ACTIONS. THE MANNER OF RECOVERY AND ADDITIONAL PENALTIES MAY BE PROVIDED BY LAW.

Section 7. Counties and municipalities. ANY COUNTY OR MUNICIPALITY MAY ADOPT ORDINANCES OR CHARTER PROVISIONS WITH RESPECT TO ETHICS MATTERS THAT ARE MORE STRINGENT THAN ANY OF THE PROVISIONS CONTAINED IN THIS ARTICLE. THE REQUIREMENTS OF THIS ARTICLE SHALL NOT APPLY TO HOME RULE COUNTIES OR HOME RULE MUNICIPALITIES THAT HAVE ADOPTED CHARTERS, ORDINANCES, OR RESOLUTIONS THAT ADDRESS THE MATTERS COVERED BY THIS ARTICLE.

Section 8. Conflicting provisions declared inapplicable. ANY PROVISIONS IN THE STATUTES OF THIS STATE IN CONFLICT OR INCONSISTENT WITH THIS ARTICLE ARE HEREBY DECLARED TO BE PREEMPTED BY THIS ARTICLE AND INAPPLICABLE TO THE MATTERS COVERED BY AND PROVIDED FOR IN THIS ARTICLE.

Section 9. Legislation to facilitate article. LEGISLATION MAY BE ENACTED TO FACILITATE THE OPERATION OF THIS ARTICLE, BUT IN NO WAY SHALL SUCH LEGISLATION LIMIT OR RESTRICT THE PROVISIONS OF THIS ARTICLE OR THE POWERS HEREIN GRANTED.