

Honorable Yeulin Willett
State Representative, HD 54
Colorado State Capitol
200 East Colfax Avenue
Denver, CO 80202

RE: HB 16-1216

Dear Representative Willett,

I serve as a Republican appointee to the Colorado Independent Ethics Commission ("IEC" or "Commission"). I have served on the Commission since its inception. Today, I write you as an individual member of the Commission, not on behalf of the Commission.

I have two major concerns to share regarding HB 1216. First, the bill suggests several significant changes to the jurisdiction of the Commission. Secondly, the fiscal note seriously underestimates the cost of operating in the manner the bill suggests. I will highlight a few of the most significant problems in the bill.

Independent Counsel

~~The IEC can and has in the past used private attorneys not from the Attorney General's office.~~
This has been to avoid conflicts or to obtain specific guidance on legal matters. The cost of outside counsel has been around \$350 per hour as compared to the standard billing rate of approximately \$98 by the Colorado Attorney General's office. At the approximate hourly legal use of 1800 hours per year, the bill would increase just the standard legal operating costs of the Commission by an additional \$453,600, assuming the Commission's work load remains the same.

To date, I can only point to one instance where the representation of the Commission by the Colorado Attorney General's has been remotely in question. In that instance, the perception of a conflict was recognized and appropriate "walls" established to avoid a conflict of interest.

New Prosecutorial Division

The most significant change suggested by the bill is to create a prosecutorial division within the IEC under section 2 of the bill. This division would require separation from the main office of the Commission and would require the hiring of a prosecuting attorney and an investigator to avoid conflicts with the adjudicatory functions of the Commission. If this function is also to be independent from the Attorney General's staff, standard prosecuting attorney and investigator rates will need to be applied. I cannot imagine that the extra space and staff requirements could be supplied for less than \$250,000 to \$300,000 per year.

In its initial rulemaking, the IEC heard from "covered individuals" expressing concern that they did not wish to be accused and vilified in the press while unsubstantiated allegations of ethical misconduct lingered before the Commission. In response, the Commission established a process where ethical misconduct was at the forefront and that those alleging ethical misbehavior have a duty to stand behind their allegations.

In my view, the IEC has a duty to both the accuser and the accused. To create a system that allows accusers to allege "unethical behavior" and to walk away from the "accusation" will only discredit those who serve in government without a fair opportunity to confront their accusers.

Expanded Jurisdiction

At this point, I can only note the expanded jurisdiction proposed for the Commission throughout the remainder of the proposed bill. The Commission is made of volunteers. It does not have the members or staff to hear matters which currently must be filed with the Secretary of State (see CRS 24-6-202 and CRS 24-6-203) or in other forums. The Commission meets once perhaps twice a month. To make the Commission the "alternative forum" for matters beyond "ethical behavior" will confuse the public, overwhelm this volunteer Commission and increase operating costs.

Legislative Impact

~~I must admit that placing limitations on the ethics opinions of the legislature in Section 11 (CRS 24-18-113) and repealing legislative interstate travel and membership in Section 14 (CRS 2-3-311 (2)(d)) of the proposed bill are matters to be discussed by the legislature. The question remaining is whether the legislature intends the IEC to assume a greater role in these matters?~~

Sincerely,



Matt Smith

3074 Alegre Court

Grand Junction, CO 81504