

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, Colorado 80202	
Plaintiff: COLORADO ETHICS WATCH v. Defendant: COLORADO INDEPENDENT ETHICS COMMISSION	▲ COURT USE ONLY ▲ Case Number:2009CV _____ Division: Courtroom:
Attorneys for Plaintiff: Chantell Taylor, # 33059 Luis Toro, #22093 Colorado Ethics Watch 1630 Welton Street, Suite 415 Denver, Colorado 80202 Telephone: (303) 626-2100 Fax: (303) 626-2101 E-mail:ctaylor@coloradoforethics.org; ltoro@coloradoforethics.org	
COMPLAINT	

Colorado Ethics Watch (“Ethics Watch”), for its complaint against the Colorado Independent Ethics Commission (“IEC”) alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Ethics Watch is a nonprofit corporation, qualified to conduct business in Colorado, that uses legal tools to hold public officials and organizations accountable for unethical activities that undermine the integrity of state and local government.
2. The IEC is a commission created by Article XXIX of the Colorado Constitution, independent from both the executive and legislative branches.
3. This Court has jurisdiction over the IEC and venue is proper in this Court.

GENERAL ALLEGATIONS

4. Pursuant to Colo. Const. art. XXIX, § 5, the purpose of the IEC “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.”

5. Section 3 of Article XXIX, the “gift ban,” generally bans gifts of more than \$50 value in a calendar year to, among others, members of the General Assembly, subject to certain exception. Section 3(3) of Article XXIX expressly provides that the gift ban does not apply to “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 nonprofit organization receives less than five percent (5%) of its funding from for-profit organizations or entities.”

5. On April 16, 2009, the IEC held a telephonic meeting. The posted agenda for that meeting, a copy of which is attached as **Exhibit 1**, listed as an agenda item “Advisory Opinion 09-04.” Upon information and belief, the IEC did not provide any notice of the April 16 meeting other than the agenda.

6. The minutes of the IEC’s April 16 meeting, a copy of which is attached as **Exhibit 2**, reflect that the meeting commenced at 10:35 a.m., at which time the commissioners addressed “general business,” and five minutes later at 10:40 a.m. until 11:00 a.m. the commissioners met in executive session. The IEC then returned to open session at 11:00 a.m., unanimously approved Advisory Opinion 09-04, “subject to a review for typographical and scrivener errors,” and then adjourned at 11:05 a.m.

7. On April 17, 2009, the IEC issued Advisory Opinion 09-04, which was backdated to April 16, 2009. A copy of Advisory Opinion 09-04 is attached as **Exhibit 3**.

8. The IEC could not possibly have debated, drafted and approved Advisory Opinion 09-04 during the five minute open session on the subject. On information and belief, the open session only “rubber-stamped” a decision to approve the Advisory Opinion that had been made in private.

9. Advisory Opinion 09-04 approved a legislator’s request to accept an invitation to join a trip to Turkey. Travel expenses for the legislator and her spouse, except for airfare, would be paid for by one or more nonprofit organizations. The legislator was one of several members of the General Assembly invited on the Turkey junket.

10. In the advisory opinion, the IEC specifically noted that the payment of travel expenses to the legislator could not be justified under Section 3(3) of Article XXIX because one nonprofit that was paying for the trip received 24% of its total funding from a for-profit business and because funding information regarding the second nonprofit was unknown.

11. The IEC nevertheless ruled that because five criteria from a “position statement” previously issued by the IEC were satisfied, payment for the Turkey junket

would be deemed a “gift to the Colorado government” and not a gift to the legislator subject to the gift ban.

12. Nothing in the Advisory Opinion suggests that the IEC had any evidence that the nonprofits who were paying for the junket intended to confer a gift on the State of Colorado as opposed to the specific legislator invited on the trip. To the contrary, the Advisory Opinion specifically states that “other members of the General Assembly” along with other “leading figures” also received invitations to participate in the junket.

13. Because of the secrecy surrounding this advisory opinion, members of the public had no opportunity to scrutinize the information before the IEC nor provide any input regarding the IEC’s decision to blatantly ignore the plain language of the gift ban and the common understanding that a gift to the state is given to the state, not to a specified legislator.

14. Upon information and belief, the IEC met in secret to prepare Advisory Opinion 09-04 and failed to provide the public with any notice of the subject matter of that meeting because the IEC is aware that the Advisory Opinion is plainly contrary to Article XXIX of the Colorado Constitution.

FIRST CLAIM FOR RELIEF
(Judicial Review of Agency Action – Declaratory Judgment)

15. Ethics Watch repeats Paragraphs 1 – 14 above.

16. Section 5(3) of Article XXIX of the Colorado Constitution provides in pertinent part that “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. . . . 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.”

17. Ethics Watch filed the first complaint with the IEC and the only complaint to date that has proceeded to a hearing.

18. Ethics Watch has an interest in preserving its right under the Colorado Constitution to file complaints asking whether a violation of Article XXIX or any other standard of conduct or reporting requirement subject to IEC jurisdiction has been violated and having non-frivolous complaints investigated and heard by the IEC. Ethics Watch also has an interest in public officials’ compliance with Article XXIX and an interest in the IEC acting in accordance with its constitutional mandate.

19. Ethics Watch’s interests are substantially harmed by the issuance of Advisory Opinion 09-04, because the opinion effectively re-legalizes junkets banned by

Article XXIX and the IEC can be expected to summarily dismiss complaints asking whether the conduct described in Advisory Opinion 09-04 violates the gift ban of Article XXIX.

20. Advisory Opinion 09-04 is unsupported by any evidence that the donor(s) intended to confer a gift on the State of Colorado and is contrary to the plain language of Article XXIX.

21. Pursuant to C.R.S. § 24-4-106 and/or C.R.C.P. 57, Ethics Watch is entitled to an order declaring Advisory Opinion 09-04 unlawful and setting the Advisory Opinion aside.

SECOND CLAIM FOR RELIEF
(Violation of Open Meetings Law)

22. Ethics Watch repeats Paragraphs 1 – 21 above.

23. The IEC is a “state public body” for purposes of the Colorado Open Meetings Law, C.R.S. § 24-6-402.

24. C.R.S. § 24-6-402(2)(a) states that “[a]ll meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.”

25. Similarly, C.R.S. § 24-6-402(4) states that "no adoption of any proposed policy, position, resolution, rule, regulation, or formal action . . . shall occur at any executive session that is not open to the public."

26. Final approval at an open meeting of a decision made in a closed meeting is a violation of the Open Meetings Law. *Van Alstyne v. Housing Auth.*, 985 P.2d 97 (Colo. App. 1999) (approval at an open meeting of a decision to sell city owned property made at closed meeting was mere rubber stamp of the initial decision and in violation of the OML).

27. A resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be invalid if made at a meeting that violates the requirements of C.R.S. § 24-6-402(2).

28. The meeting at which Advisory Opinion 09-04 was approved did not meet the requirements of C.R.S. § 24-6-402(2). To the contrary, the five-minute public meeting merely rubber-stamped the decision already made and memorialized in a nine-page advisory opinion that was previously drafted and deliberated in closed meeting, contrary to law.

29. Ethics Watch is entitled to an order declaring Advisory Opinion 09-04 to be null and void, and permanently enjoining the IEC from taking any action based on that Advisory Opinion, including but not limited to relying on that Advisory Opinion in connection with the resolution of any complaints filed with the IEC, or putting on any training or educational programs that treat the Advisory Opinion as valid.

30. Pursuant to C.R.S. § 24-6-402(9), Ethics Watch is entitled to an award of its reasonable attorneys' fees incurred in this action.

WHEREFORE, Plaintiff Colorado Ethics Watch respectfully requests that the Court enter judgment declaring Defendant Independent Ethics Commission's Advisory Opinion 09-04 unlawful, setting aside that Advisory Opinion, permanently enjoining Defendant from taking any action based on that Advisory Opinion, awarding Plaintiff its reasonable attorneys' fees, costs, and granting such further relief as the Court deems proper.

DATED: May 18, 2009.

COLORADO ETHICS WATCH

[Original Signature On File]
Luis Toro, #22093

Address of Plaintiff:
1630 Welton Street, Suite 415
Denver, CO 80202