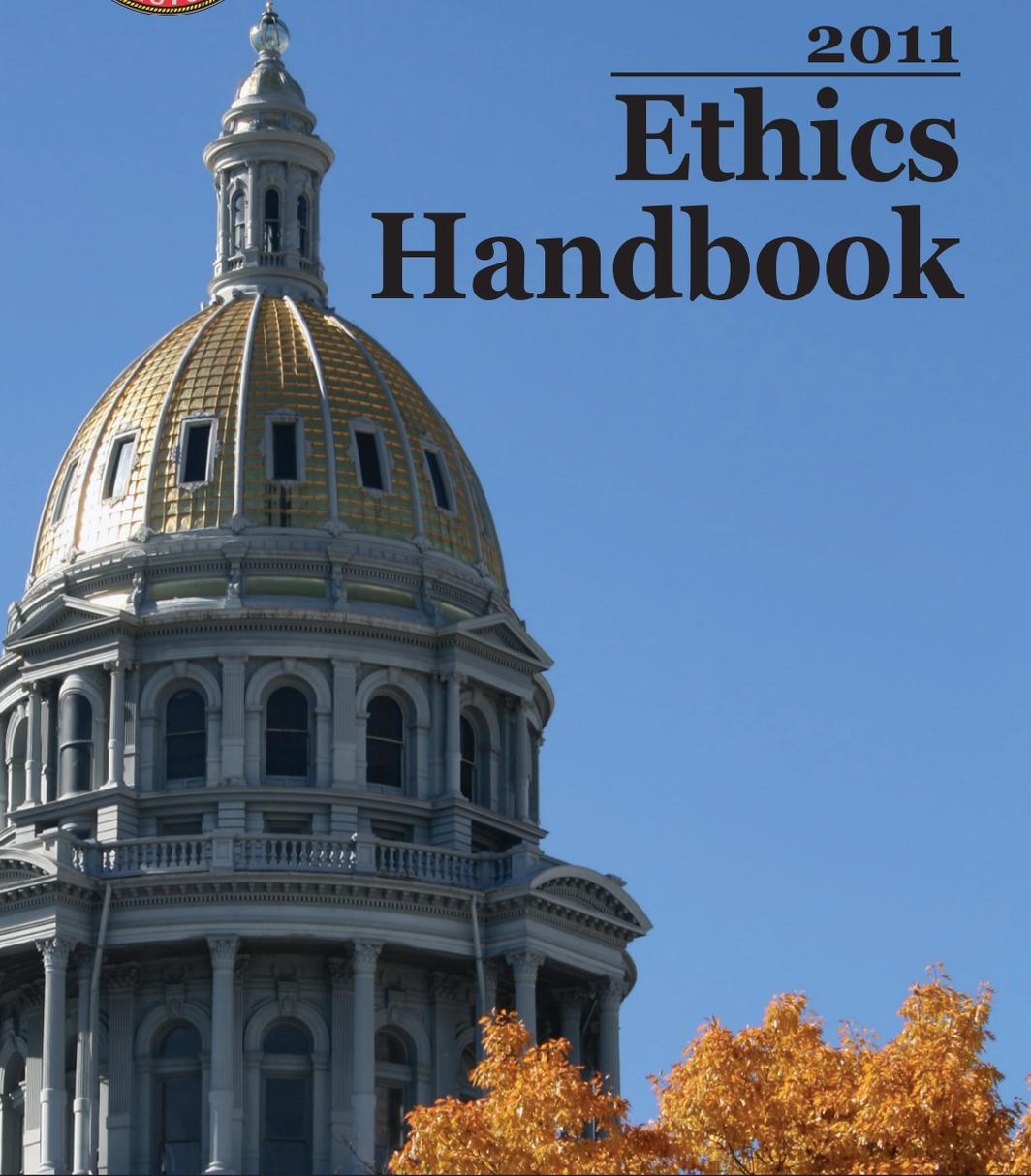




Independent Ethics Commission

2011

Ethics Handbook



The IEC is an independent commission, created by voters under Article XXIX of the Colorado Constitution, committed to advancing ethics in government.





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Introduction

The IEC was created by voters in November 2006 with the passage of Amendment 41. The amendment created Article XXIX in the Colorado Constitution and established a commission to oversee ethics questions for the executive and legislative branches of State government, as well as certain county and municipal governments. Following the enactment of Article XXIX the legislature passed enabling legislation (§24-18.5-101, C.R.S.) that further defines the role and responsibilities of the IEC.

The purpose of this handbook is to try to explain how the IEC helps shape ethical government, provides guidance to public employees when faced with an ethical question, and instills a sense of public trust in government activities.

Please be aware that the information in this booklet is presented as a broad informational reference only and should not be relied upon as an official record of action, legal position, or legal advice. It is always recommended that you contact IEC staff or obtain your own independent counsel if you have questions regarding your compliance with Article XXIX.



Why Do We Have an Ethics Commission?

In 2006 voters approved a measure that focused on establishing formal authority over the ethical conduct of public officials and government employees. The result was the passage of Amendment 41 which now appears as Article XXIX of the Colorado Constitution. Unlike some other states, Colorado's ethics commission was not created as result of a major ethics scandal. As such, the IEC was not created with a goal of "cleaning up corrupt government." The IEC is committed to advancing an ethical culture throughout government and helping define ethical conduct for the public employees and officials under its jurisdiction. Because Article XXIX is embodied in the State's constitution, neither the IEC nor lawmakers can modify its language, or create laws that limit the scope of the original amendment. The IEC interprets Amendment XXIX, provides guidance to those covered by the amendment, and responds to formal requests.

Who Makes Up the IEC?

The IEC consists of five volunteer members. No more than two members can be from a single political party, and all are appointed by different authorities. The Governor, the State House of Representatives, the State Senate and the Chief Justice of the Colorado Supreme Court each appoints one member to the IEC. The fifth member must be from local government and is appointed to the Commission by the other four IEC members. The two legislative appointees to the IEC must be approved by the Senate and House respectively, and each serve a four year term. Terms are staggered according to law, but Commission members are not prohibited from serving multiple terms.

What Does the IEC Do?

The IEC has the authority to give advice to government employees and officials, provide advice to the public, or issue broad position statements in response to issues that impact many people. The IEC can also hear formal ethics complaints and even has the discretion to issue penalties, depending on the circumstances of the complaint.

The IEC has been in existence since 2007 and in that time it has issued a number of decisions. Common themes include: conflict of interest, gifts, paid travel and employment outside the government. The IEC has issued opinions that affect virtually every government employee under its jurisdiction—as well as opinions that guide a single employee in very specific circumstances.





How Does the IEC Work?

The Independent Ethics Commission assists government employees, businesses and citizens by providing ethics guidance under the authority of Article XXIX of the Colorado Constitution. Where a request comes from will determine the type of action the IEC may take.

Advisory Opinion: A written opinion by the IEC addressing more specific ethics issues in response to a written request by someone who is a public officer, member of the General Assembly, local government official, or government employee on a specific factual question. These opinions are provided as guidance—usually issued in advance of an event.

Letter Ruling: A written opinion by the IEC addressing ethics issues in response to a written request by a person who is not a public officer, member of the General Assembly, local government official, or government employee on a specific factual situation. These rulings are provided as guidance—usually issued in advance of an event.

Position Statement: An IEC-initiated written statement addressing a broad ethics issue, or frequently asked question, that provides general guidance for public officers, members of the General Assembly, local government officials, government employees, and the public.

Formal Complaint: The IEC has the authority to hear formal ethics complaints from anyone about the conduct of a public official or employee under certain circumstances. Complaints typically are filed after the conduct in question has occurred.

What is the IEC’s Jurisdiction?

The IEC has authority over the ethical conduct of any state government employee in the Executive and Legislative branches of government. The IEC also has authority over members of the General Assembly (for example: a state representative or senator), and statewide elected officials. The IEC does not have authority over employees of the Judicial branch of state government, or government volunteers (for example: an unpaid commissioner).

The IEC also has jurisdiction over employees and elected officials of certain municipal and county governments. The IEC does not have authority over “home rule” municipalities and counties—provided those cities and counties have adopted their own ethics codes or ordinances. The IEC does not have jurisdiction over special districts (for example: a parks & recreation district) or school districts.

The IEC has jurisdiction over more than just Article XXIX. The constitution also allows the IEC to decide ethical matters based on other ethics standards of conduct or reporting requirements as provided by law. When hearing a complaint the IEC has jurisdiction only over events that occurred in the 12 months prior to the filing of the complaint. The IEC cannot hear a complaint about something that happened two or three years ago.

What is a Conflict of Interest?

Much of what the IEC does centers around the concept of “conflict of interest.” Article XXIX, however, does not specifically define the term “conflict of interest.” While the constitution provides some guidance, the people of the State of Colorado generally expect public employees and officials to act for the benefit of everyone and not favor only a few individuals, businesses or personal interests. As a general principle public employees and officials are expected to avoid situations involving private interests (financial or non-financial) that may affect objectivity while performing official duties within the employee’s **“area of authority.”**

A conflict of interest also can exist when a covered employee can take or influence official actions that may appear to personally benefit the employee, family member, business associate or potential employer even if there is no technical violation of the law. Such situations are usually described as having an **“appearance of impropriety.”**





Area of Authority

Public employees at all levels are responsible for decisions that affect people and businesses. Enforcement actions, the purchasing of materials or equipment, application processing, benefit qualification decisions and licensing decisions all affect people in important ways. Using the authority of a decision-making position to personally obtain something of value for free, or far below its actual value, might be considered a breach of public trust.

Example: An employee of a state agency is responsible for approving purchasing decisions for the agency. One of the bidders on an open/competitive RFP offers to pay for a trip for the specific employee to attend a strategy meeting that will benefit the bidder's staff. The trip is to the bidder's out of town headquarters. The trip is not necessary for the employee to make a decision regarding the RFP. It might be considered inappropriate for the employee to accept the expense-paid trip, since it is within the employee's area of authority to approve the successful bidder on the contract.

Appearance of Impropriety

This term references those events that are subject to ethical questions or scrutiny whether or not they are technically legal. Appearance of impropriety questions are among the most common questions asked of the IEC.

The Commission has addressed the issue of "appearance of impropriety" in a number of its opinions. The IEC references actions that may be, "violating the smell test" (See: Advisory Opinion 09-06) and cautions against the appearance of impropriety even though the actions under discussion technically may be legal.

Example: A group of covered individuals wants to create a new nonprofit organization and solicit donations to pay for the group's meeting costs, staff, meals, facility rentals and speakers. While the group of individuals legally may be able to form a nonprofit organization and legally may be able to solicit donations to support the organization, there could be an appearance that the group may be trying to circumvent the constitution. Thus, there potentially could be an appearance of impropriety—regardless of the group's intent.



What is Considered to be a Gift?

For purposes of the IEC's authority, gifts are defined generally in Article XXIX, Section 3. What exactly a gift is often is the subject of IEC Advisory Opinions. As a general concept a gift is something received for which the employee didn't pay, or provide fair value, in exchange. The constitution lists some items as both allowable and not allowable for government employees to accept. Certain IEC opinions have further refined the list.

As a general guideline, those covered by the IEC's jurisdiction are not allowed to accept anything worth more than \$50 (as a single item or combination of items from a single source). This includes not only the covered government employee but the employee's spouse or child. Covered employees are also not allowed to accept gifts of any value from professional lobbyists.

In general, some of the things employees and their family members are not allowed to accept are:

- Money
- Forgiveness of debt
- Loans
- Travel paid for by for-profit organizations (and some non-profit organizations)
- Unreasonable promises of future employment

In general, some of the things employees and their family members usually are allowed to accept are:

- Scholarships
- Gifts from relatives and friends
- Items of trivial value (pen, calendar, note pad, etc.)
- Publications related to the employee's job
- Admission to and a meal at a reception (when employee is a speaker or presenter)
- Travel to conventions or meetings paid for by certain non-profit organizations





It is important to note that apparently small differences in facts can result in a different interpretation by the Commission as is evidenced in the various Advisory Opinions, Letter Rulings and Position Statements issued in the past. For details on the Commission's opinions regarding acceptance of gifts, the IEC recommends you review complete case decisions on-line at: **www.colorado.gov/ethicscommission**.

What is Acceptable Post-Government Employment?

Many government employees operate under certain restrictions or requirements with respect to holding a second job, or outside employment, while working as a public employee. These limitations may be as simple as intradepartmental reporting of a part-time job to a supervisor, or as limiting as prohibiting someone from working for a designated period of time in certain jobs after leaving government employment.

In addition to prohibitions in the constitution regarding restrictions on becoming a lobbyist after leaving office for certain elected officials, (see: Article XXIX, Section 4), there are a number of statutes that limit the ability of certain covered employees from doing certain work after leaving a government job. It is important for employees to verify with departmental human resources staff whether accepting an offer for future employment may be in violation of a statute or rule.

The IEC has issued opinions regarding the propriety of accepting a job offer after leaving government employment. The IEC has defined generally what post-government employment is appropriate and when an employee may engage in discussions regarding a post-government job (see: Position Statement 09-03, and Advisory Opinion 10-15). Since many of these situations are dependent on specific facts, employees with questions regarding the propriety of accepting post-governmental employment are encouraged to contact the IEC for guidance before acting.

Appendix A:

IEC Decisions

This section lists all of the Independent Ethics Commission Position Statements, Advisory Opinions and Letter Rulings issued through 2010. For the full text of each decision, the latest decisions, and other useful reference information regarding the IEC please visit: www.colorado.gov/ethicscommission on-line.

Topic Index	Opinion
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Awards and Prizes	Advisory Opinion 10-01 Advisory Opinion 09-08 Advisory Opinion 09-07 Advisory Opinion 09-05 Position Statement 08-01
Contests	(See: Awards and Prizes)
Contractors	Position Statement 09-07
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Gifts, generally Position Statement 08-01

Gifts to the State Advisory Opinion 10-11
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Gifts, university professors Advisory Opinion 09-01

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Lobbyists Advisory Opinion 10-14
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Nonprofit Advisory Opinion 10-18
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Position Statement 10-01
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Person Position Statement 09-04

Prizes (See: Awards and Prizes)



**Public Service
Announcements**

Advisory Opinion 10-05

“Revolving Door”

Position Statement 09-02
(See also: Lobbyists)

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Advisory Opinion 09-08
Advisory Opinion 09-05
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Solicitation of Donations

Advisory Opinion 10-14
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Special Discounts

Position Statement 08-03

Special Occasions

Position Statement 08-01

Travel, generally

Position Statement 08-02

Travel

(Nonprofit with <5% for profit funding)

Advisory Opinion 10-19
Advisory Opinion 10-10
Advisory Opinion 09-05

Travel

(Nonprofit with >5% for profit funding)

Advisory Opinion 10-12
Letter Ruling 10-01

Travel

(Paid by Federal Government)

Advisory Opinion 10-02

Travel

(Paid by For Profit Entity)

Advisory Opinion 10-17
Advisory Opinion 10-06
Letter Ruling 09-06

Travel

(Paid by Foreign Government)

Advisory Opinion 10-11

Travel

(Paid by Organization Receiving State Dues)

Advisory Opinion 10-19
Advisory Opinion 10-03





Appendix B:

Colorado Constitution 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 borne 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 determines 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.

Source: Initiated 2006: Entire article added, effective upon proclamation of the Governor, L. 2007, p. 2960, December 31, 2006.





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