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**April Jones**, *Commissioner*  
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**Dino Ioannides**, *Executive Director*

## **Advisory Opinion 16-05** (Conflict of Interest)

**Summary:** A local government official should avoid real and perceived conflicts of interest when voting on or debating questions that affect the personal, private, or financial interests of the official.

### **I. Background**

Board of Trustees member Rachel New (“New”), of the Town of Pitkin, Colorado, filed a request for an advisory opinion requesting guidance about a possible conflict of interest between New’s personal business and her role as a member of the Town’s Board of Trustees (the “Board”).

New indicates that she is a newly elected member of the Board as a result of elections held in April, 2016. Prior to her election, in the spring of 2014, New established a property management business, which she owns. Among other services, her business provides house winterizing, de-winterizing, cleaning, lawn maintenance, window washing, laundry services, errand services, pest control, and general maintenance. Included in the business portfolio is the management of short-term rental properties. New assists in the short-term leasing of these properties by taking reservations, receiving rental payments, and remitting taxes on behalf of the homeowner. Twenty percent of the business income is generated by managing the two short-term rentals.

The Town of Pitkin is a statutory town. Recent issues being addressed by the Board include updating the zoning code to regulate short term rentals. In this regard, New may be faced with policy debate and/or voting on short term rental issues in the context of her duties as a member of the Board. Specifically, Sections 3, 7, and 8 of the Amended Town of Pitkin Zoning Code of 2012 provide:

Section 3. Definitions. For the purpose of this code, certain words and phrases used herein shall be defined as follows:

\* \* \*

37. Short-term Transient Rental (Lodging): Rental of a residential structure or part thereof, for any twenty-nine (29) day period or less, is considered a

commercial/business use.

\* \* \*

Section 7. Principal Permitted Uses. This section enumerates the principal uses which are permitted in each zoning district:

A. Resident, Low Density Residential:

1. Dwellings, single family
2. Community centers and public buildings
3. Parks and playgrounds
4. Accessory uses as listed in Section 10 of this Code
5. Long-term permanent rental: Rental of a residential use of structure, or part thereof, where the occupants are primarily permanent in nature for any thirty (30) day period or more. (Nontransient)

B. Business, Business:

1. Any use permitted in the Resident district
2. Accessory buildings and uses
3. Amusement or recreation
4. Automobile gas stations or garages
5. Automobile parking lots
6. Club or lodge
7. Dining or drinking places
8. Hotel or motel
9. Laundromat
10. Office or clinic
11. Retail store or shop
12. Schools and churches, including seasonal church schools.

Section 8. Conditional Uses. The following uses shall be permitted only after written request to the Board of Trustees, and acceptance of written approval made by the Board of Trustees:

\* \* \*

D. Short Term Rental (Lodging) in the Business District: After review of the Zoning Board of Adjustment, a recommendation for conditional use appropriate to the available water, sewage, and off-street parking will be referred to the Board of Trustees for final decision. [Emphasis added.]

The Town Clerk confirms that the Town of Pitkin does not currently have any conflicts of interest or other ethical policies in place.

## II. Jurisdiction

Ms. New is a member of a statutory town's Board of Trustees and is therefore a "local

government official” under Colo. Const. Article XXIX, sec. 2(3), and C.R.S. § 24-18-102(6).

The Independent Ethics Commission has authority to issue advisory opinions on ethics issues arising under Article XXIX or any other standards of conduct or reporting requirements as provided by law. *See* Colo. Const. Article XXIX, sec. 5(5).

### **III. Applicable Law**

Conflicts of interest are addressed in C.R.S. § 24-18-109 as follows:

(2) A local government official or local government employee shall not:

\* \* \*

(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent[.]

\* \* \*

(3) (a) A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

### **IV. Discussion**

#### *A. Conflicts of Interest.*

The conflicts of interest statute cited herein restricts a local government official such as New from: (1) performing an official act directly and substantially affecting to its economic benefit a business in which the local government official has a substantial financial interest; and (2) voting on or attempting to influence the decisions of other members of the governing body in voting on a matter in which the local government official has a personal or private interest.

The Commission finds that New’s ownership interest in a property management business that manages short-term rentals in the Town of Pitkin is substantial. As such, New must refrain from performing any official act that directly and substantially benefits the business economically. For example, because the Town’s zoning code requires the Board to give final approval for conditional short-term rental uses, New should refrain from voting to grant or withhold such approval when doing so would economically benefit her business. Moreover, New must not vote or attempt to influence the decisions of other members of the Board when she has a personal or private interest in the outcome.

## *B. Appearance of Impropriety.*

In addition to the statutory provisions cited above, Colo. Const. Article XXIX, sec. 1(c), requires covered individuals “to 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.”

Appearances of impropriety are generally referred to as “perception issues” or “violating the smell test.” They can weaken public confidence in government and create a perception of dishonesty, even among government officials who are in technical compliance with the law.

In order to avoid the appearance of impropriety, local government officials should avoid voting on or debating questions in a manner that may lead the public to perceive that the local government official is either placing his or her own private business interests in a position of competitive advantage or keeping his or her own private business interests from being adversely affected by the decisions of the governing body.

The Commission also recommends that when feasible, counties and municipalities should consider enacting an ethics code to provide further guidance to elected officials with similar potential conflicts.

## **V. Conclusion**

A member of a town’s board of trustees should follow Colorado statutes pertaining to conflicts of interest and constitutional requirements pertaining to the appearance of impropriety.

The Commission cautions public official and employees that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission therefore encourages individuals with particular questions to request more fact specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

## **The Independent Ethics Commission**

William J. Leone, *Chair*

Bob Bacon, *Vice-Chair*

April Jones, *Commissioner*

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Dated: June 30, 2016