COLORADO INDEPENDENT ETHICS COMMISSION
Complaint No. 11-03

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Colorado Ethics Watch,
Complainant,

v.

J. Kevin McCasky,
Respondent.

On February 6, 2012 and March 19, 2012 the Independent Ethics Commission ("IEC" or "Commission") (Commissioner Hopper recused) conducted a hearing as required by Colorado Constitution Article XXIX, section 5(3)(c) regarding Complaint 11-03 filed with the Commission. The IEC heard argument and received stipulated facts and documentary evidence. All findings are made by a preponderance of the evidence, unless otherwise expressed. Based on the Commission's investigation and the evidence received at the hearing, the Commission finds as follows:

Findings of Fact

1. J. Kevin McCasky served as a Jefferson County Commissioner from January 2005 through January 2011.

2. On November 2, 2010, Mr. McCasky applied for a position as Executive Director of the Jefferson Economic Council ("JEC"), by sending his resume to a consulting firm, Jorgensen Consulting.

3. JEC is supported in part by contributions from Jefferson County. In 2010 Jefferson County contributed $380,000 to JEC.

4. Mr. McCasky has been a supporter of JEC and has urged an increase in Jefferson County's contribution to JEC for several years.

5. On November 4, 2010, the Jefferson County Board of Commissioners was briefed by staff on the proposed budget for 2011. At that meeting Commissioner Hartman proposed increasing the contribution to the JEC to $400,000.

6. On December 6, 2010, Jorgensen Consulting narrowed the list of applicants to four candidates including Mr. McCasky for the position

of JEC Executive Director. Mr. McCasky was informed of this by telephone on December 8, 2010.

7. On December 7, 2010, the Jefferson County Board of Commissioners formally approved the budget for 2011. Commissioner Griffin moved the resolution detailing the contributions for 31 separate entities. The resolution included an increase from $380,000 to $400,000 to the JEC. Mr. McCasky seconded the motion, and the motion passed 3-0.

8. At the time of the vote, Mr. McCasky had not publicly disclosed that he had applied for the position with JEC, although both Commissioners Griffin and Hartman were aware of his application.

9. On December 15, 2010, Mr. McCasky was interviewed for the position of Executive Director of JEC. He was interviewed again on January 7, 2011, and offered the job on January 11, 2011.

Conclusions of Law

A. Colorado Constitution Article XXIX, Section 3(2)

Section 3(2) of Article XXIX provides:

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 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...**promises or negotiations of future employment** ...from a 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 solicited, accepted or received the gift or other thing of value. (emphasis added).

After reviewing the relevant facts and law, the Commission finds:

1. Mr. McCasky was a "local government official" as defined by Colorado Constitution Article XXIX section 2(3), and was subject to the Commission's jurisdiction at the time of the events in question.

2. Under the circumstances of this case, submission of an application for future employment without anything in addition does not amount

to "promises or negotiations of future employment" as that term is used in the Constitution.

3. For this reason, Mr. McCasky did not accept a prohibited gift of future employment under Article XXIX, section 3(2).

B. Colorado Revised Statutes §24-18-109(2):

Colorado Revised Statutes §24-18-109(2)(b) provides that a local government official shall not:

> 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. (emphasis added)

C.R.S §24-18-102(4)(c) defines a financial interest to include a substantial interest held by an individual which is "employment or prospective employment for which negotiations have begun." Unlike the Constitution, C.R.S. §24-18-102(4) defines financial interest to include "prospective employment for which negotiations *have begun*".

After reviewing the facts and the law, the Commission finds that:

1. Mr. McCasky took official action regarding JEC by voting on the increased contribution by Jefferson County to the JEC.

2. The increased contribution substantially affected JEC to its economic benefit.

3. Negotiations for prospective employment began when Mr. McCasky submitted his resume to JEC in November 2010.

4. For these reasons, the Commission finds 2-1 (Commissioner Smith dissenting on finding 2, above) that Mr. McCasky violated C.R.S. §24-18-109(2).

C. Colorado Revised Statutes § 24-18-109(3(a)

Colorado Revised Statutes §24-18-109(3)(a) provides:

> 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.

After reviewing the facts and the law, the Commission finds that:

1. Mr. McCasky, while serving as a member of the governing body of a local government, did not publicly disclose to the Jefferson County Board of County Commissioners that he had submitted a resume to JEC.

2. Mr. McCasky had a personal or private interest in the vote on the JEC's budget as evidenced by his submission of a resume to the JEC for prospective employment.

3. Mr. McCasky seconded and voted on the increased contribution.

4. For these reasons, the Commission (3-0), finds based on the law and the facts, that Mr. McCasky violated C.R.S. §24-18-109(3)(a).

5. The Commission rejects Respondent's arguments that the Commission should not consider a violation of C.R.S. section 24-18-109(3)(a) either on due process or statute of limitations grounds because: 1) the complaint specifically alleges violation of C.R.S. §24-18-109; 2) the violation of subsection (3)(a) is premised on the same facts set forth in the complaint; 3) the Commission provided Respondent with the opportunity to provide additional briefing and additional factual development; and 4) there is no harm to the parties.

The Commission finds that no penalty is warranted in this case.

The Independent Ethics Commission

Dan Grossman, *Chair*
Bill Pinkham, *Commissioner*
Matt Smith, *Commissioner* (dissenting in part)

Commissioner Hopper recused.
March 21, 2012

CERTIFICATE OF MAILING

This is to certify that on the 22d day of March, 2012, I emailed copies of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** addressed as follows:

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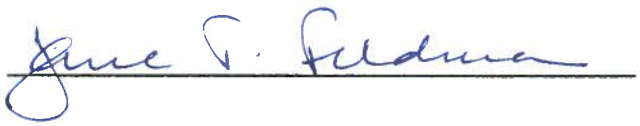
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