

BEFORE THE INDEPENDENT ETHICS COMMISSION
STATE OF COLORADO

CASE NO. 08-01

In the Matter of

MICHAEL COFFMAN, Colorado Secretary of State

ORDER REGARDING MOTION TO DISMISS

The Independent Ethics Commission (the "IEC"), based on its discussion and review of Mr. Coffman's ("Coffman") MOTION TO DISMISS (the "Motion") and Colorado Ethics Watch's ("CEW") RESPONSE TO MOTION TO DISMISS (the "Response"), hereby finds as follows:

1. The provisions of Amendment 41, as passed by Colorado voters in 2006, now codified as Colo. Const. art. XXIX, were found by the Colorado Supreme Court in *Developmental Pathways, et al. v. Ritter*, 178 P. 3d 524, 2008 Lexis 169 (Colo. 2008) to be self-executing.

"...a constitutional provision is self-executing when the provision appears to take immediate effect and no further action by the legislature is required to implement the right given..." *Id. at 531.*

2. In the *Developmental Pathways* case the Colorado Supreme Court expressly rejected the arguments set forth in Section I and II of Mr. Coffman's Motion to Dismiss.

3. In *Developmental Pathways*, the Court carefully analyzed the self-executing concept of Amendment 41 indicating that no further legislation is necessary to implement the law.

4. The provisions of Colo. Const. art. XXIX have been in place since December 31, 2006, when it was certified by the Governor. Within Colo. Const. art. XXIX there is a self executing statute of limitations in that the conduct which is alleged to be in violation of state ethics law must be within twelve months of the complaint being filed. Therefore, the Commission has jurisdiction to hear testimony and accept evidence on the conduct of Coffman which is alleged in the Complaint to have occurred within twelve months of the filing of the Complaint which was done on February 13, 2008.

5. The Commission has already made a threshold determination that the allegations in the Complaint are not frivolous. *IEC Rule 7.D.3*. The Complaint, as pled, alleges conduct, which if proven by the evidence accepted by the Commission at a hearing, could violate Colorado ethics laws. The Commission makes no statement as to the truth or veracity of the allegations as pled. Those determinations would be made by the Commissioners after hearing and reviewing the evidence.

6. Article XXIX states that any "[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." The Commission believes that Article XXIX contemplates that it has jurisdiction to hear complaints that allege conduct other than simply private gain or personal financial gain. Thus, the Commission's jurisdiction is not limited to allegations of "private gain" or "personal financial gain." Article XXIX, Section 5 empowers the Commission to "hear complaints, issue findings, and assess penalties...on ethics issues arising under this article and **under any other standards of conduct and reporting requirements as provided by law.**" (emphasis added). Thus, the Commission's jurisdiction is broader than "private gain" or "personal financial gain."

7. The Commission agrees that it does not have jurisdiction to enforce criminal statutes. It does, however, have jurisdiction to determine if conduct is unethical pursuant to state ethics laws.

8. It is a choice of the Commission to hear evidence on conduct that has been investigated by other agencies. The hearing scheduled in this matter is for the purpose of determining whether or not Mr. Coffman's behavior violates state ethics laws.

THEREFORE, Mr. Coffman's Motion to Dismiss is denied in its entirety.

Dated this 5th day of February 2009.



Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **ORDER REGARDING MOTION TO DISMISS** was transmitted via E-Mail this 5th day of February, 2009, addressed to each of the following:

Douglas J. Friednash, Esq.
Greenberg Traurig
1200 17th Street, Suite 2400
Denver, Colorado 80202
Email: friednashd@gtlaw.com

Luis A. Toro, Esq.
Colorado Ethics Watch
1630 Welton St., Ste. 415
Denver, CO 80206
E-mail: ltoro@coloradoforethics.org

/s/ Terri Gonzales_____