

**ORDER DENYING MOTION TO DISMISS AND REQUEST FOR
RECONSIDERATION OF FRIVOLOUS DETERMINATION**

Colorado Ethics Watch,
Complainant,

v.

Scott Eric Gessler, Colorado Secretary of State
Respondent.

On December 20, 2012, the Respondent filed a Motion to Dismiss the Complaint and a Response and Request for Determination of Frivolousness. The Response contains a request that the Commission reconsider its finding that Complaint 12-07 is not frivolous. The Commission denies the Motion to Dismiss and the request for a reconsideration of the frivolous determination, as more fully set forth below.

Motion to Dismiss

Respondent contends that the Complaint should be dismissed because it alleges violations of criminal statutes and the IEC does not have jurisdiction over criminal statutes. However, the Complaint alleges sufficient facts warranting a Commission investigation into a potential violation of the Constitution or other standards of conduct or reporting requirements and dismissal on this theory is unwarranted. The Commission notes that it does not have the authority to enforce criminal sanctions in this case.

Respondent further contends that the Complaint should be dismissed because the Commission only has jurisdiction over influence peddling and there are no allegations that the Respondent engaged in influence peddling. However, the Complaint alleges sufficient facts warranting a Commission investigation of a potential violation of the Constitution or other standards of conduct or reporting requirements and dismissal on this theory is unwarranted.

Respondent further contends that the Complaint should be dismissed because it lacks clarity sufficient to apprise the Respondent of alleged violations. However, the factual allegations contained in the Complaint are sufficiently specific to provide notice to the Respondent of the case against him, as evidenced by the detailed Response submitted by Respondent. Such factual allegations warrant a Commission investigation of a potential violation of the Constitution or other

standards of conduct or reporting requirements. Dismissal of the Complaint on this theory is unwarranted.

Finally, Respondent contends that the Complaint should be dismissed because the Complaint fails to contain a signed attestation as set forth in IEC Rule 7.D.4. However, the Complaint was signed by Complainant, an attorney registered in the State of Colorado, and submitted using the Commission's own form. Therefore, dismissal on this theory is unwarranted.

Given the foregoing, Respondent's Motion to Dismiss is denied.

Request for Reconsideration of the Commission's Non-frivolous Determination

The Respondent requests that the Commission reconsider its previous decision that Complaint 12-07 is not frivolous. The Commission denies this request. Pursuant to Article 29 of the Colorado Constitution and the Commission's Rules of Procedure, the Commission considered the factual allegations of the Complaint and the applicable statutory standards of conduct, and determined that the Complaint is non-frivolous. Respondent's contention that the Commission should not have made the non-frivolous determination in executive session is without merit and contrary to the express language of Article 29. Therefore, Respondent's request for reconsideration of the Commission's non-frivolous determination is denied.

Parties

The Commission further finds that the Department of State is not a party to this matter and, aside from witness testimony from its employees, is precluded from participating in these proceedings.

The Independent Ethics Commission

Dan Grossman, *Chair*
Rosemary Marshall, *Commissioner*
Bill Pinkham, *Commissioner*
Matt Smith, *Commissioner*
Sally Hopper, *Commissioner*

January 23, 2013

CERTIFICATE OF MAILING

This is to certify that on the 23rd day of January, 2013, I emailed copies of the foregoing **ORDER DENYING MOTION TO DISMISS AND REQUEST FOR RECONSIDERATION OF FRIVOLOUS DETERMINATION** addressed as follows:

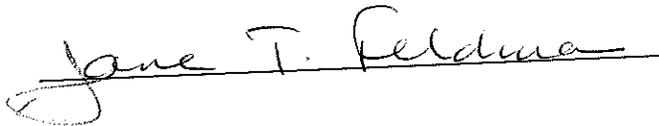
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