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MEMORANDUM

TO: Interested Persons

FROM: Office of Legislative Legal Services

DATE: September 20, 2011

SUBJECT: FAQ's on Article XXIX's "Revolving Door" Provision.¹

Background:

Section 4 of Article XXIX² provides as follows:

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.

Accordingly, a member of the General Assembly may not:

1. Personally represent another person or entity;
2. For compensation;
3. Before any other:
 - a. Statewide elected officeholder; or

¹ This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

² Colo. const. art. XXIX, frequently referred to as "Amendment 41".

b. Member of the General Assembly;

4. For a period of two years following vacation of office.

The following addresses some frequently asked questions about Article XXIX's "revolving door" provision as it applies to members of the General Assembly. In August 2009, the Independent Ethics Commission ("IEC") created by Article XXIX³ issued a position statement addressing the revolving door provision.⁴ The responses to the following questions represent this Office's effort at interpreting the provision based upon the IEC's position statement. This memorandum is not a formal legal opinion. Guidance should be sought from the IEC on specific questions involving unique fact situations by requesting an advisory opinion or letter ruling.⁵

Frequently Asked Questions:

The following are some frequently asked questions in connection with the "revolving door" provision of Article XXIX as it relates to members of the General Assembly.

1. Who or what is a "person or entity" that a former member is prohibited from personally representing for compensation before a statewide officeholder or member of the General Assembly?

Under Article XXIX, a "person" means any:

- Individual;
- Corporation;
- Business trust;

³ See: Colo. const. art. XXIX, sec. 5.

⁴ See: Position Statement 09-02 concerning Restrictions on Representation after Leaving Office.

⁵ Colo. const. art. XXIX, sec. 5(5), provides:

Section 5. Independent ethics commission. (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.

- Estate;
- Trust;
- Limited liability company;
- Partnership;
- Labor organization;
- Association;
- Political party;
- Committee; or
- Other legal entity.⁶

"Other legal entity" is not defined in Article XXIX. Black's Law Dictionary defines "legal entity" as "[a]n entity, other than a natural person, who has sufficient existence in legal contemplation that it can function legally, be sued or sue and make decisions through agents as in the case of corporations."

"Entity" is also not defined in Article XXIX. Black's Law Dictionary defines "entity" as "[a]n organization or being that possesses separate existence for tax purposes. Examples would be corporations, partnerships, estates and trusts. Entity includes person, estate, trust, governmental unit." Accordingly, the dictionary definition of "entity" specifies the same organizations covered by Article XXIX's definition of "person" and adds "governmental unit" to that group.

2. *Does a "person or entity" covered by the revolving door provision include a state or local governmental entity?*

Yes, although others have opined that the definition of "person" does not extend to such entities. As noted above, state or local government is not specifically included among the organizations and entities listed within Article XXIX's definition of "person". However, it has been our cautious approach to suggest that a government or governmental unit is arguably a "legal entity" included within the definition of a "person" for Article XXIX purposes or an "entity", the definition of which, as noted, includes a governmental unit. Furthermore, the IEC issued a position statement in September of 2009, in which it specifically found that the term "person" is broad enough to include a government agency or governmental subdivision or a public entity such as an institution of higher education.⁷

⁶ Colo. const. art. XXIX, sec. 2 (4).

⁷ See Position Statement 09-04.

However, at least one law firm has opined on behalf of the National Conference of State Legislatures, prior to the issuance of the IEC position statement, that the inclusive list under the definition of a "person" in Article XXIX does *not* include a government or governmental agencies.⁸

3. *Does "personally represent another person or entity for compensation" apply to paid "lobbying" activities?*

Yes. It seems reasonable to conclude that the "revolving door" provision prohibits a former member from being paid to lobby a statewide elected official or member of the General Assembly for a period of two years following vacation of his or her office. The plain meaning of this phrase as well the legislative history of the measure support this conclusion.⁹

In its position statement addressing restrictions on representation after leaving office, the IEC determined that the term "personally represent" was intended to mean that elected office holders and members of the general assembly are prohibited from serving as "professional lobbyists" for two years following leaving office. In interpreting the term "professional lobbyists", the IEC's opinion went on to state that former elected office holders or members of the general assembly cannot accept employment that will also require their registration as a professional lobbyist under section 24-6-301, C.R.S. or as a legislative liaison for a state agency pursuant to section 24-6-303.5, C.R.S.¹⁰

4. *Does the restriction prohibit a former member from accepting employment with a "person or entity" that is frequently represented before a statewide elected official or member of the General Assembly by a person other than the member?*

⁸ See February 5, 2007, letter "Re: Applicability of Colorado Amendment 41 to NCSL Activities" from Holland and Hart, LLP, to William T. Pound, Executive Director of NCSL.

⁹ The 2006 State Ballot Information Booklet (referred to as the "Blue Book"), described the purpose of section 4 of the measure as prohibiting "statewide elected officeholders and state legislators from *lobbying* professionally for two years after leaving office", observing that "[t]his restriction applies only to *lobbying* a state legislator or a statewide elected officeholder. [Emphasis added]

¹⁰ See Position Statement 09-02, which also states that it would be permissible under Article XXIX, section 4 for a former statewide elected official or a member of the general assembly to accept another job in state government, such as a position in the governor's cabinet, within two years after leaving elected office. The IEC noted that section 24-6-303.5 (4)(c), C.R.S., expressly excludes members of the governor's cabinet and personal staff employees in the offices of the governor and lieutenant governor from the registration requirement.

No. The "revolving door" provision does not appear to prohibit employment with a "person or entity." Rather, the prohibition is on a former member representing a "person or entity" for compensation before a statewide elected officeholder or member of the General Assembly. It does not prohibit a former member from being employed by a person or entity that has an individual, other than the former member, who represents that person or entity before a statewide officeholder or legislators in such a capacity. If the former member's employment responsibilities do not require him or her to appear before or communicate with a statewide elected officeholder, member of the General Assembly, or a committee or board of such individuals in a representative capacity, it would not appear that the revolving door provision is implicated. Furthermore, under the IEC's analysis, if the former member's new employment does not require that he or she register as a professional lobbyist, then the activity would not violate section 4 of Article XXIX.

Thus, the "revolving door" provision does not prohibit employment of a former member with: a) A law firm that engages in lobbying activities; b) A corporation or business that employs a lobbyist; c) A public interest organization such as the Independence Institute or Bell Policy Center; or d) A state agency or local government.

5. *Does the "revolving door" provision prohibit a former member from lobbying a statewide elected official or member of the General Assembly for a state agency or local government?*

Yes, if a "person or entity" includes a state agency or local government. Based on the responses to questions number 2. and 3. above, we would assume that a former member is prohibited from lobbying on behalf of a state agency or local government for the relevant two year period.¹¹ As noted previously, the IEC has found that, if the former member's new position as a legislative liaison would require that he or she register pursuant to section 24-6-303.5, C.R.S., then such employment would be prohibited within two years following departure from office.

6. *Does the revolving door provision prohibit a former member from representing a person or entity before a statewide elected official or member of the General Assembly on a voluntary basis and without compensation?*

¹¹ Section 24-6-303.5, C.R.S., recognizes that certain persons lobbying for a principal department of state government are subject to the Colorado Sunshine Law's registration requirements for lobbyists.

No. The prohibition applies only to representation "for compensation". A former member would not be prohibited by section 4 from being a volunteer lobbyist or simply representing a person or entity without pay before a statewide official or a member of the General Assembly. Furthermore, volunteer lobbyists are not required to register with the secretary of state's office pursuant to section 24-6-303 (1), C.R.S.

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