C.R.S. 24-18-103

Statutes current through Chapter 25 of the 2024 Regular Session, effective as of March 12, 2024. The 2024 legislative changes are not final until compared and reconciled to the 2024 work product of the Colorado Office of Legislative Services later in 2024.

24-18-103. Public trust - breach of fiduciary duty.

(1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee.

History

Source:L. 88: Entire article added, p. 900, § 1, effective July 1.

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 24

C.R.S. Title 24, Art. 18

State Notes

ANNOTATION

This section, when read in conjunction with the rest of the standards of conduct, establishes an ethical standard of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public employment.

Thus, allegations that a public official breached his or her fiduciary duty under this section by using public employment for improper personal financial gain fell within the ambit of the independent ethics commission's (IEC's) jurisdiction under § 5 of art. XXIX of the state constitution. Gessler v. Smith, 2018 CO 48, 419 P.3d 964, cert. denied, __ U.S. __, 139 S. Ct. 430, 202 L. Ed. 2d 318 (2018).

Given the allegations against the former secretary of state, the IEC properly exercised jurisdiction under § 5 of art. XXIX of the state constitution.

The claims were predicated on allegations that the secretary improperly used his discretionary funds for personal financial gain -- specifically, that he used state funds for partisan purposes and that he accepted a reimbursement for personal purposes. The allegations clearly implicate the ethical standard of conduct set forth in this section and thus fall within the IEC's jurisdiction under § 5 of article XXIX. Gessler v. Smith, 2018 CO 48, 419 P.3d 964, cert. denied, __ U.S. __, 139 S. Ct. 430, 202 L. Ed. 2d 318 (2018).

Secretary of state breached the public trust for private gain in violation of this section

by using funds from his discretionary account for purposes other than official business. Colo. Ethics Watch v. Gessler, Indep. Ethics Comm'n 12-07.

Acceptance of gifts from partner nonprofit organ procurement organization by driver's license examiners may result in appearance of impropriety.

Indep. Ethics Comm'n Advisory Opinion 14-08.

present a potential violation of the public trust

and a potential conflict of interest and could inhibit compliance investigator's ability to carry out regulatory duties in an impartial manner for the benefit of the state. Indep. Ethics Comm'n Advisory Opinion 19-05.

Parties' stipulation that, by admitting to facts sufficient to prove embezzlement of public property and official misconduct, respondent has admitted to breach of public trust and fiduciary duty

pursuant to this section. King v. King, Indep. Ethics Comm'n 14-16.

Failure of county commissioner to disclose his personal or private interest in a matter being voted on,

failure to recuse himself from the matter, and attempts to influence his fellow commissioners in violation of rules of conduct for local government officials constitutes a breach of the public trust for private gain. Matter of Flower, Indep. Ethics Comm'n Complaint 20-73.

There is no breach of public trust sufficient to constitute an ethics violation where town clerk, prior to approval by the town board of trustees, recorded

a vacation of an alleyway that bisected a private organization's property. In re Ricotta, Indep. Ethics Comm'n Complaint 17-25.

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