



M U L T I S T A T E

## [Investigation of 1 Fort Collins City Council member to move forward after ethics review](#)

Fort Collins officials plan to investigate an allegation that city council member Ken Summers might have offered lobbying services to the public since he was elected.

The allegation came to light in the second batch of ethics complaints contesting council members' votes on the [rezoning of the former Hughes Stadium site](#).

Four city council members, acting as an alternate ethics review board on Friday, decided against pursuing complaints that Mayor Wade Troxell and Mayor pro-tem Kristin Stephens should've recused themselves from the vote because they're employees of landowner Colorado State University. Those complaints, filed by Fort Collins resident Rory Heath, were similar to [previous complaints that council members rejected in December](#).

But Heath's third complaint gave them pause.

The complaint highlighted a tab on Summers' personal website that advertises lobbying services. The website wasn't operational as of Friday night, but archived versions of the site show that he was advertising his consulting business, KGS Consulting, with the tagline "Opening doors; providing access; empowering influence." The former state representative references legislators, bills and the capitol in his description of services, and his business logo includes an image of the Colorado State Capitol. Summers has repeatedly told council his consulting business has never had a client and he hasn't been registered as a lobbyist since 2016.

"It might be an oversight, but this makes it seem like he's being a lobbyist while on council," council member Ross Cunniff said.

Council members Cunniff, Julie Pignataro, Emily Gorgol and Susan Gutowsky decided that the ethics board should reconvene to make a plan for investigating whether Summers has made any money as a lobbyist while in city office. They said the decision adheres to the city's ethics

procedures, which task the ethics review board with screening complaints to determine whether allegations would constitute ethical violations if they were true.

The next ethics review board meeting hasn't been scheduled yet. Council's final vote on the Hughes Stadium site rezoning remains set for March 17.

All three of Heath's complaints centered on the reality that the land's zoning could affect its sale price. CSU is under contract with Lennar Homes to sell the 165-acre site for \$10 million, but the contract states that Lennar will back out of the purchase if it appears the land's zoning won't accommodate at least 600 housing units.

The university stands to gain an additional \$16,000 for every lot approved beyond 625. But it could lose \$16,000 per lot, up to a maximum of \$400,000, if fewer than 625 lots are approved.

Troxell, Stephens and Summers were part of the 4-3 majority that [voted last fall to zone the land to allow higher-density development on the east side](#) and lower-density development on the west side. The community group PATHS (Planning Action to Transform Hughes Sustainably) has been urging council to preserve the land as open space or zone it for low-density development because of its proximity to the foothills and several natural areas.

Heath said Troxell and Stephens had a conflict of interest in the Hughes vote because the land's zoning could create a financial benefit or hindrance for their employer, which he argued could affect their employment status. Both Troxell and Stephens vehemently denied that the zoning vote would bear them any direct, substantial financial benefit.

#### *What records show about Summers' business*

Heath's complaint about Summers was less specific to the Hughes rezoning.

He said the ad for KGS Consulting on Summers' website appears to be an explicit attempt to make money off his influence as a local government officer.

"The laws that are passed and the regulations that are established have a significant impact on citizens and of all types in Colorado," the page reads. "Navigating through the maze of the political arena can be a challenge. That is why an individual with experience working with you and advocating on your behalf can make a difference."

Summers said he started the consulting firm in an effort to generate income after he became critically ill with West Nile virus in 2013, but it never took off.

KGS Consulting LLC remains in good standing with the Colorado Secretary of State's Office, although Summers terminated his lobbying registration in 2016. He was elected to Fort Collins City Council in 2017.

Ellen Caruso Public Affairs paid Summers \$8,000 for lobbying activities between 2015 and 2016, state records show. Summers' [disclosure reports from that period](#) show he supported the passage of three bills: Two were related to patients' access to and payment for physical rehabilitation services, and one would've barred state universities from denying privileges to religious groups that require their leaders to "adhere to the group's sincerely held religious beliefs or standards of conduct." Ellen Caruso Public Affairs is a lobbying firm that represents small health care businesses.

Summers provided the ethics review board with a statement instead of attending the meeting in person.

He described his consulting business as an effort to secure employment in nonprofit consulting and government relations to supplement his disability payments. He said investigation of ethics complaints is "incumbent upon the individual initiating the complaint to offer solid and verifiable documentation of the validity of the allegation."

"Mr. Heath has done none of this," Summers continued. "He only makes insinuations that have no basis in fact and border on (libel) and slander."

"Mr. Heath has the obligation to identify the interest I have which conflicts with a zoning decision before the City Council. He has in his documentation offered none, outside of a bizarre reference to my past attempts to gain some meaningful, legal and ethical income for my family."

Heath said he has no evidence that Summers has traded money for votes on council, but he said Summers' advertisement of his lobbying services online is an obvious ethical concern.

"This is quite literally a billboard," Heath said. "The fact that this billboard exists ... is an issue. The fact that a council member has a business still operating, still up, and still going forward is a big issue."

Summers told the Coloradoan in an email Friday afternoon that he was preparing for an early morning flight to Washington, D.C., on council business.

“Since there is no rational basis for this ethics complaint my presence would only give an impression the complaint is legitimate and needs to be defended,” he wrote.

Reacting to the news that the ethics board had decided to investigate him, he said Heath should've researched the claim before filing it. He added that it's not an inherent conflict of interest for someone to be a lobbyist while serving in elected office, "especially when that lobbying effort is directed toward state policy."

*What is the basis of the complaints?*

State law prohibits local government officials who have a "personal or private interest in any matter proposed or pending before the governing body" from voting on those matters, but the statute doesn't define "personal or private interest."

Another state statute bars local government officials from performing "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."

The definition of financial interest includes employment.

Heath also cited those statutes in his complaints against Troxell and Stephens. State ethics statutes don't define "business or other undertaking," but Colorado's Independent Ethics Commission has concluded in past advisory opinions that public universities aren't businesses in the case of the ethics statutes.

Heath took issue with that interpretation.

“The paycheck still says ‘CSU,’” he said. “However you want to look at it, it’s a matter of technicality. Does it provide a service? Yes. Are there people that are employed? Yes. Does money change hands? Yes.”

Attorney Andrew Bertrand, who assisted Heath during the ethics review meeting, said the situation "smells bad."

"You can make arguments all day long about loopholes and why this doesn't apply to you," he said. "It just doesn't look right. I don't think the community would agree with this."

Echoing their defense from the last round of ethics complaints, Troxell and Stephens said they have no involvement with the Colorado State University System or the board of governors, which facilitates things like large property sales.

“My faculty annual evaluation is based on my teaching, research and service,” said Troxell, who's an associate mechanical engineering professor at CSU. “There's a (false) notion of shared governance between faculty and administration. The administration is the operational portion of the university. The faculty is part of an academic enterprise. I'm on the academic side.”

Stephens is a state classified employee in the statistics department, so the state legislature rather than CSU oversees her salary, benefits and terms of employment.

“I'm not trying to find loopholes here,” Stephens said. “Honestly, this is what my job looks like. It's a very small cog in the machine of what happens at CSU.”

Council members said the community's ample ties to CSU, both in terms of employees and alumni, could also make it a unique case.

“How many people work in the CSU system – five digits?” Pignataro said. “This can be taken way too far, and I think we're teetering on that edge.”

#### *Council open to ethics review changes*

Council members said they're ethically bound to their procedures for reviewing ethics complaints, but they expressed varying levels of dissatisfaction with those policies. The last round of ethics complaints inspired council to work on a new way of reviewing ethics complaints filed against council members. It makes sense for council members to field complaints about board and commission members, they said, but they're concerned about the perception of “the fox guarding the hen house” when a complaint involves a council member. They're reviewing alternate procedures and plan to consider new rules this summer.

Cunniff took that one step further on Friday, calling for council to consider creating a way to better address perceptions of ethical misconduct – instances where a city officer's conduct is technically defensible but appears unethical to the public.

Gutowsky agreed.

“It's about how it looks,” she said. “I think that's why this keeps coming back to haunt us. This is the second time that we've been through this.”

Heath begged council members to refer the ethics complaints to an independent outside body or postpone the review until they can reconsider city policy.

“There is a hole in the death star,” he said. “Can we patch that up before we vote on one of the most important pieces of property in the city?”

Gorgol replied that the board "can't make an ethics decision based on something not looking right."

"We are going through a process that we created to talk about this diligently," she said. "This isn't something that is taken lightly. It's our job to look at this with just the facts."

### **Looming Reforms May Bring Lobbyist Associates Out of the Shadows**

Calls for disclosure of shadow lobbying got a boost recently when Governor Phil Murphy included shadow lobbying as part of his ethics reform package.

The Governor's recommendation follows on the heels of legislation introduced last session that would capture shadow lobbying by requiring professionals hired by lobbying firms to disclose their employment even though they do not directly communicate with legislators or the Governor's office.

The legislation, sponsored by Senate President Stephen Sweeney and approved 5-0 by a Senate committee in December, is yet to be introduced in the current session.

Shadow lobbying refers to lobbyist firms employing individuals who do not directly communicate with elected or appointed officials even though they provide services to the lobbying organization that enhance the firm's ability to influence public policy.

As with modern society in general, issues involving public policy have become increasingly complex. In response, the nature of lobbying has likewise become more sophisticated.

Though traditional, person-to-person, old school lobbying remains, firms are arming themselves with lawyers, political consultants, public relations professionals, pollsters, researchers, digital and social network experts, and strategic planners to help them navigate the increasing array of issues in order to successfully influence government.

As lobbying firms employ additional weapons to assist them in impacting government, lobbying laws need to be amended in order to acquaint the public of those professionals who ply their skills in assisting with this more sophisticated approach toward influencing the process.

By enacting legislation to require disclosure of shadow lobbying in New Jersey, the Legislature would be undertaking sensible reform in the best interest of the public.

In a 2017 column, I noted that “a new phenomenon called shadow lobbying has taken hold in Washington D.C.” and that “it, too, has implications for New Jersey.”

Even two years ago, it was clear that the lobbying community in New Jersey was every bit as innovative as federal lobbyists.

As with the growth of independent, outside groups, shadow lobbying may have started at the federal level, but now has trickled down to the state level. New Jersey is no exception.

Interestingly, just as the growth of independent groups has resulted in less transparency in the electoral process, the increase in shadow lobbying may be contributing to a decrease in the number of registered lobbyists and thereby to less overall disclosure of lobbying activity.

For example, the Center for Responsive Politics, alluding to activity at the national level, suggested in a 2017 report, “what has become more prevalent over the last decade are hordes of lobbyists deliberately moving into the shadows to avoid the consequences of registration.”

Moreover, 2,100 federal lobbyists in 2016 reported no lobbying activity though a majority still worked for the same employer.

According to the Center’s most recent information, there has been a 20 percent decline in registered lobbyists since 2007, from 14,827 to 11,862 in 2019.

New Jersey has witnessed a similar, though smaller, downward trend in registered lobbyists. In 2019 there were 947 registered lobbyists compared with 1,043 in 2008- a 9.2 percent falloff.

It is unclear exactly what caused this decline.

But one answer could be the fact that under current law, those that make significant contributions to lobbying firms without communicating directly with state officials have no legal obligation to register or report as governmental affairs agents (lobbyists).

Expansion of reporting of lobbying activity has been done before without major difficulties.

Before new laws took effect in 2004, the public had no idea how much lobbyists spent lobbying executive branch officials, or how much they expended on large media buys called grassroots lobbying because it seeks to mobilize the public for or against legislation.

Now they do.

Yesterday (March 9, 2020), the Election Law Enforcement Commission released its annual analytical press release on 2019 lobbying activity. The report showed that lobbying activity in New Jersey exceeded \$100 million, the highest ever reported.

It is unknown how much of that lobbying was due to the help of professionals hired by New Jersey's lobbying firms. However, if those consultants were required to disclose their names, services and fees, the public would get a much fuller picture of lobbying in the Garden State.

As Sheila Krumholz, Executive Director of The Center for Responsive Politics, has stated: "It's time to revisit the rules and close the loopholes, so that disclosure is meaningful, providing comprehensive information . . ."

### **[Leon County looking at beefing up lobbying ordinance, upgrades to 911 system](#)**

County commissioners could be on their way to adopting a new ordinance that would more clearly define lobbying, but it may not address the county's lack of penalties for those who violate the rules.

The ordinance, if approved by commissioners and taken up at a public hearing next month, would consolidate the definitions of "lobbying" and "lobbyist" contained within the ordinance and amend county code to include individuals who fit the definitions under regulations.

County staff reviewed lobbying ordinances around the state and found two main differences. Six of eight governments they reviewed, including Tallahassee and Leon County, only define a lobbyist as someone who is paid to influence government officials. Others define them to include people paid and not paid.

The county however, has not addressed its lack of an enforcement mechanism for lobbyist violations after County Commissioner Rick Minor indicated he wanted a broad review of the ordinance.

“As I see it, we need to do two things at Tuesday’s meeting: 1) clarify our lobbying regulations to eliminate ambiguity, and 2) increase awareness of the County’s enforcement procedures and penalties,” Minor said in an email. “Enforcement is important — we need accountability to ensure full transparency of lobbying activity.”

In his request for ways to improve transparency, Minor cited [reporting this year by the Tallahassee Democrat](#) about the intersection of lobbying, private business and public policy.

### **[Former Congressman registers to lobby for a nonprofit whose mission is to hire lobbyists for the people](#)**

Lobbyists 4 Good, the nation's first nonprofit that hires [lobbyists](#) on behalf of the American people, announced today that it has hired former Representative Steve Driehaus as a lobbyist.

Mr. Driehaus, who served as a Member of Congress from Ohio's 1st Congressional District, will lobby Congress to pressure the African nation of [Mauritania](#) to end protection for perpetrators of ethnic cleansing campaigns against black Africans from 1989 to 1992 and restore citizenship for thousands of Mauritians. Many of Driehaus's former constituents are of Mauritania descent and their families came to the U.S. to escape the violence and severe human rights violations by the Mauritania government. The campaign was created on Lobbyists 4 Good's platform after the community had already met with Driehaus to ask his help lobbying Congress.

"Mr. Driehaus should be applauded for taking on this issue as a lobbyist," said Billy DeLancey, Co-founder and CEO of Lobbyists 4 Good. "It proves that not all members of Congress take jobs with big corporations or wealthy special interest groups when they leave Congress. The people funding this campaign are lucky to have somebody with his experience and expertise."

The campaign has already raised over \$5,000 with an average donation of \$200. It was started by Hawa Sall who was born in a refugee camp in Senegal after her family fled the violence.

"I think, too often, lobbying is associated with former Members trying to use their experience to parlay it for personal financial gain," said Driehaus. "But lobbying is also necessary to educate current Members about injustices that persist around the world. It is a way to give voice to the voiceless. That is why I entered public service, and I view lobbying as a means of continuing that service to the people of southwest Ohio. I hope that drawing upon my experience, we can affect

change for the thousands of Mauritians, living in the US and abroad, who are adversely impacted by their government's policies."

Congressman Driehaus has also agreed to lobby Congress to increase funding for the United States [Peace Corps](#) if the campaign can reach the \$5,000 milestone needed to hire a lobbyist. Driehaus served as a Peace Corps Country Director in the African countries of Swaziland and Morocco, empowering youth and combating the scourge of HIV/AIDS after he left Congress.

#### *More about Lobbyists 4 Good*

Lobbyists 4 Good is the first crowdfunding platform that empowers people to hire lobbyists working for them. Similar to other crowdfunding platforms, individuals submit campaign ideas on their website and funds are raised through peer-to-peer small donations. Campaigns must align with the group's [Founding Principles](#) and raise \$5,000 to hire a lobbyist for the issue.

#### *More about former Representative Steve Driehaus*

Mr. Driehaus is the Managing Partner of the [Good Government Group](#) based in Cincinnati. He served as a Member of Congress from Ohio's 1st Congressional District focusing on regional development issues, financial reform, and government accountability. After Congress, he led the efforts of the United States Peace Corps in the African countries of Swaziland and Morocco, empowering youth and combating the scourge of HIV/AIDS. Before serving in Congress, Steve served eight years in the Ohio Statehouse, and was elected by his peers to House Minority Whip. He received his B.A. from Miami University (OH) and his M.P.A. from Indiana University.